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C'est la force et le droit qui règlent toutes choses dans le monde; la force, en attendant le droit.—*Joubert*

CODIFICATION OF AMERICAN INTERNATIONAL LAW

PROJECTS OF CONVENTIONS PREPARED AT THE
REQUEST ON JANUARY 2, 1924, OF THE GOVERN-
ING BOARD OF THE PAN AMERICAN UNION FOR
THE CONSIDERATION OF THE INTERNATIONAL
COMMISSION OF JURISTS, AND SUBMITTED BY
THE AMERICAN INSTITUTE OF INTERNATIONAL
LAW TO THE GOVERNING BOARD OF
THE PAN AMERICAN UNION
MARCH 2, 1925



PAN AMERICAN UNION
WASHINGTON, D. C.
1925

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TABLE OF CONTENTS

	PAGE
1. Address of the Honorable Charles Evans Hughes, submitting the projects of convention to the governing board of the Pan American Union, March 2, 1925.....	1
2. Resolutions adopted by the governing board of the Pan American Union, March 2, 1925.....	4
3. Letter transmitting projects of conventions, March 2, 1925.....	5
Annex A. Letter addressed to the members of the American Institute of International Law, October 12, 1924.....	15
B. Resolution concerning the codification of American International Law adopted at the Fifth International Conference of American States, Santiago, Chile, April 26, 1923.....	17
C. Convention establishing an international law commission adopted at the Third International Conference of American States, Rio de Janeiro, August 23, 1906	19
D. Resolution of the Advisory Committee of Jurists meeting at The Hague in 1920, recommending the codification of international law	22
4. Texts of projects:	
1. Preamble	24
2. General declarations	26
3. Declaration of Pan American unity and cooperation	27
4. Fundamental bases of international law.....	28
5. Nations	33
6. Recognition of new nations and new Governments....	34
7. Declaration of rights and duties of nations.....	35
8. Fundamental rights of American Republics.....	37
9. Pan American Union.....	38
10. National domain	42
11. Rights and duties of nations in Territories in dispute on the question of boundaries.....	45

4. Texts of projects—Continued.	PAGE
12. Jurisdiction -----	47
13. International rights and duties of natural and juridical persons -----	51
14. Immigration -----	53
15. Responsibility of Governments -----	54
16. Diplomatic protection -----	55
17. Extradition -----	57
18. Freedom of transit -----	63
19. Navigation of international rivers -----	67
20. Aerial navigation -----	68
21. Treaties -----	77
22. Diplomatic agents -----	79
23. Consuls -----	86
24. Exchange of publications -----	89
25. Interchange of professors and students -----	90
26. Maritime neutrality -----	92
27. Pacific settlement -----	100
28. Pan American court of justice -----	106
29. Measures of repression -----	115
30. Conquests -----	118
Appendix. Costa Rican plan for a Pan American court of justice -----	119

CODIFICATION OF AMERICAN INTERNATIONAL LAW

1. REMARKS OF THE HON. CHARLES E. HUGHES, SECRETARY OF STATE OF THE UNITED STATES, AS CHAIRMAN OF THE GOVERNING BOARD OF THE PAN AMERICAN UNION, AT A SPECIAL MEETING OF THE GOVERNING BOARD HELD ON MONDAY, MARCH 2, 1925

It is a high privilege to present the subject of this special meeting to the governing board of the Pan American Union. It is a subject of transcendent importance as it relates to the establishment among the nations of the reign of law and to the endeavor of the American Republics to hasten the fulfillment of this purpose by a more definite formulation of the rules of international law. It was fitting that the American Republics, free as they happily are from many of the historic antagonisms and rival ambitions which have vexed the peace of other parts of the world, should take the lead in this effort, and through the painstaking studies of American jurists gratifying progress has been made.

At the meeting of the governing board of the Pan American Union on January 2, 1924, it was my privilege to present to you, and the board adopted, a resolution referring to the action of the Fifth International Conference of American States and to the proposed international congress of jurists to be held at Rio de Janeiro, and inviting the cooperation of the American Institute of International Law in the essential task of the codification of international law. The executive committee of the American Institute cordially accepted this invitation and has now presented the result of its labors in a series of projects, or draft conventions.

There are 30 of these projects covering a wide range of subjects dealing with the American international law of peace. They represent the labors of distinguished jurists of this hemisphere. I shall not attempt to state their titles, and it is sufficient to say that they embrace a declaration of the rights and duties of nations, statements of the fundamental bases of international law and of the fundamental rights of the American Republics, and the formulation of rules with respect to jurisdiction, international rights and duties, and the pacific settlement of international disputes. It is natural, as is pointed out by the executive committee of the American Institute of International Law, that the law to be applied by the American Republics should, in addition to the law universal, contain not a few rules of American origin and adapted to American exigencies, and that the

old and the new, taken together, should constitute what may be called American international law, without derogation from the authority of the law which is applicable to all nations.

In the letter presenting these projects for the consideration of the representatives of the American Republics the executive committee of the American Institute directs attention to American initiative in this work of codification. It is recalled that the first codification of the rules and practice of nations was the *Instructions for the Government of Armies of the United States in the Field* prepared by Dr. Francis Lieber, which was issued in 1863 by Abraham Lincoln. This code was found to be accurate and comprehensive. It furnished the basis and the inspiration of the important labors of Bluntschli. The Second International Conference of the American Republics held in 1901-2 in Mexico City provided for the appointment of a committee to draft codes of public international law and private international law to govern the relations of the American Republics. While the convention then proposed was not ratified, the interest in the subject continued, and the question of the codification of international law was again taken up at the Third Pan American Conference held at Rio de Janeiro in 1906. The resulting convention was ratified, but the work was unavoidably delayed and the international commission did not meet until 1912. This happened to be on the eve of the World War, which interrupted the consideration of the subject. After the war the initiative was again taken by an American jurist, when Mr. Elihu Root, one of the advisory committee of ten jurists meeting at The Hague in 1920 to formulate a plan for the establishment of a permanent court of international justice, proposed to that committee the recommendation of a series of conferences to restate the established rules of international law and to formulate desirable amendments and additions. This recommendation appropriately recognized the vast importance of the development of a body of law which would govern, and be applied by, international judicial institutions. It is regrettable that there should have been such long delay in carrying forward this plan which had the full support of the advisory committee. Appreciating the importance of expert preliminary work, the proposal for international conferences to restate, improve, and develop the rules of international law carried with it the recommendation that there should be suitable preparatory efforts on the part of jurists which alone could save from failure in such an enterprise the conferences of governments.

The Fifth Pan American Conference, which was delayed because of the war, was held in Santiago, Chile, in 1923, and the plan to take appropriate measures for the codification of American international law was again brought forward. Provision was made for

the appointment of an American international commission of jurists, which accordingly has been constituted, and will soon meet at Rio de Janeiro. It is, as I have said, preliminary to the undertaking of this congress of jurists that the governing board of the Pan American Union has asked the aid of the American Institute of International Law which has so promptly and efficiently been rendered.

These projects, or draft conventions, are not submitted to the governing board either for approval or for criticism at this time. In expressing our gratification, we are not dealing with texts or passing upon particular proposals. These projects, or draft conventions, are submitted to the governing board with the recommendation, which I take pleasure in making, that they be transmitted by the members of the governing board to their respective Governments for their consideration with an appropriate expression of our gratitude for the high-minded and expert endeavors which have so happily attained this point of achievement.

What is far more important, at this moment, than any particular text or project, is the fact that at last we have texts and projects, the result of elaborate study, for consideration. We have the inspiration and stimulus of this action full of promise for the world. We feel that, thanks to American initiative, we are on the threshold of accomplishment in the most important endeavor of the human race to lift itself out of the savagery of strife into the domain of law breathing the spirit of amity and justice.

It is significant that the executive committee of the American Institute of International Law has stated that their projects relate to the international law of peace. Their members were a unit in believing that the law of war should find no place in the relations of the American Republics. We have dedicated ourselves to the cause of peace. Fortunately, we have no grievances which could furnish any just ground for war. If we respect each other's rights as we intend to do, if we cooperate in friendly efforts to promote our common prosperity, as it will be our privilege to do, there will be no such grievances in the future. There are no differences now, and there should be none, which do not lend themselves readily to the amicable adjustments of nations bent on maintaining friendship.

I believe that this day, with the submission of concrete proposals which take the question of the development of international law out of mere amiable aspiration, marks a definite step in the progress of civilization and the promotion of peace, and for that reason will long be remembered. For in this effort we are not unmindful of the larger aspects of the question, and it is our hope that the American Republics by taking advantage of this opportunity may make a lasting contribution to the development of universal international law.

2. RESOLUTIONS ADOPTED BY THE GOVERNING BOARD OF THE PAN AMERICAN UNION, MARCH 2, 1925

PAN AMERICAN UNION,
Washington, D. C., U. S. A., March 6, 1925.

The undersigned, secretary of the governing board of the Pan American Union, certifies that at the special meeting of the governing board, held on March 2, 1925, at 3 o'clock in the afternoon, in the governing board room, the following resolutions were approved:

I

Whereas the governing board of the Pan American Union, by resolution of January 2, 1924, suggested to the executive committee of the American Institute of International Law the desirability of holding a session of the institute in 1924 in order that the results of the deliberations of the institute may be submitted to the commission of jurists at its meeting at Rio de Janeiro in 1925; and

Whereas the American Institute of International Law has submitted to the governing board of the Pan American Union the results of its labors: Be it

Resolved, To send to the respective governments, members of the Pan American Union, through their representatives on the governing board, the projects of conventions on the codification of international law submitted to the board, in order that they may be submitted to the commission of jurists to be held at Rio de Janeiro in 1925; and be it

Further resolved, That the chairman of the governing board express to the American Institute of International Law the appreciation of the board for its valuable contribution to the codification of international law.

II

Whereas the Fifth International Conference of American States, held at Santiago, Chile, adopted on April 26, 1923, a resolution to convene the commission of jurists at Rio de Janeiro during the year 1925, the precise date to be determined by the Pan American Union after consultation with the Government of Brazil: Be it

Resolved, That the director general of the Pan American Union be authorized to communicate with the Government of the United States of Brazil, through its representative on the governing board, in order to fix the precise date of the meeting of the commission of jurists.

III

Whereas the American Institute of International Law has performed a most important service in preparing a series of projects covering public international law of peace: Be it

Resolved by the governing board of the Pan American Union, That the executive committee of the American Institute of International Law be requested to prepare a project or series of projects embodying the principles and rules of private international law for the consideration of the commission of jurists.

E. GIL BORGES,
Secretary of the Governing Board.

3. LETTER TRANSMITTING PROJECTS OF CONVENTIONS, MARCH 2, 1925

HON. CHARLES EVANS HUGHES,

*Chairman of the Governing Board of the
Pan American Union, Washington, D. C.*

SIR: I have the honor to transmit a report of progress from the executive committee of the American Institute of International Law in partial compliance with the invitation of the governing board of the Pan American Union of January 2, 1924, that the American Institute should hold a session within the current year in order that its deliberations on the codification of international law should be submitted to the International Commission of Jurists to meet at Rio de Janeiro in the ensuing year.

In the preamble to its invitation the governing board stated that the most important task to be undertaken by the American Institute was the codification of international law, and that therefore its labors would be of great service to the commission in fulfillment of its task.

The invitation of the governing board was transmitted by its chairman to the president of the American Institute in a communication of January 2, 1924, and as the result of consultation with the members of the executive committee the president was able to accept by letter of January 9, 1924, the invitation on behalf of its members.

A special meeting of the members of the institute for the purpose of considering the question of codification was held in Lima, in the Republic of Peru, December 20-31, within the course of the year, as requested by the governing board.

The members present at the session examined with great care the questions presented for their consideration, as appears from the informal conversations of their meetings. They directed the executive committee to examine, from the standpoint of form, the projects which they had approved, and thereupon to transmit them to the chairman of the governing board, with the request that he lay them before the members of the Pan American Union. The present communication is in pursuance of this direction.

* * * * *

The executive committee found itself confronted with no less a task than the codification of international law, as the commission to meet in Rio de Janeiro is directed to consider both the law of nations and the conflict of laws. It was evident that both subjects could not be considered in a single session. Under the most favorable circum-

stances only one could be taken up, although it would be proper, if not necessary, under the invitation, to discuss the means whereby the other subject might be considered by the institute. And it was also evident that either subject could not be discussed in its entirety at a session of the institute unless it were continued through a longer period of time than its members could spare. The executive committee therefore decided that the first session of the institute to give effect to the invitation of the governing board should be devoted to the law of nations, or, as it is frequently called, public international law. And even then it was felt, and properly, that that vast subject could not be treated in detail were it desirable to do so. The members were of the opinion that the law of war should find no place in the relations of the American Republics with one another, as war would be—if Pan Americanism is more than a word—little less than civil war, limited to the Republic in which it should unfortunately occur, and only affecting the other American Republics in some of its aspects. The members of the executive committee and of the institute present at Lima were therefore a unit in believing that only the law of peace should be considered, as peace should be, and in fact is, the normal state of affairs.

It was further decided that only that portion of the law of peace should be dealt with which seemed to have direct and immediate application to the American Republics. This attitude of the executive committee was confirmed by the members of the institute present at Lima, and the report of progress which I have the honor to transmit is an attempt to state in conventional form the principles of justice expressed in rules of law which should govern the relations of the American Republics in their mutual and pacific intercourse.

The members of the executive committee have all had international experience, having represented on more than one occasion their countries in international conference. Their experience also with scientific gatherings had led them inevitably to the conclusion that without a vast amount of preparatory labor on their part, resulting in a definite program with a series of projects, the special session of the institute would be unfruitful of results in the sense that its members would thus, with nothing but the invitation of the governing board before them, be obliged to map out a plan and to consider the method of its realization. Such a session would only be preliminary to a later one. Therefore, the members of the executive committee felt that they might properly, indeed that they should, relieve the members of the institute of this preliminary labor, and lay before the session a program and a series of projects in the hope that the institute might be able at one and the same time to adopt the program and to give its approbation to the proj-

ects, with such improvements as generally result from an exchange of views based upon concrete propositions. In this expectation the executive committee was not mistaken, for the members of the institute present at Lima approved the projects presented to them with a single exception, improving them in many respects.

* * * * *

Before passing to the form and content of the projects, it is advisable to call attention to the steps taken toward codification by the American Republics—for codification is in a very real sense an American ideal.

The first codification of the rules and practice of nations in their mutual relations undertaken and performed at the request of a government is supposed to be the *Instructions for the Government of Armies of the United States in the Field*, prepared by Dr. Francis Lieber, a Prussian by birth, and at the time a professor at Columbia College in New York. The work was revised by a board of officers of the Army, and it was issued in 1863 by no less a person than Abraham Lincoln, then President of the United States of America. This code of the laws and usages of war, although prepared for the guidance of the armies of the United States in the Civil War which then unfortunately existed, was found to be so accurate and comprehensive and so adequate to war between nations that only one case is said to have arisen out of the Franco-Prussian War of 1870-1871, which was not covered by its provisions. Doctor Lieber was in very fact the author of the instructions as they were approved, with only a modification here and there by the board of officers to which they were wisely submitted.

Johann Kaspar Bluntschli, a Swiss by birth, had settled in Germany, and he can almost be said to have "reigned" as professor of international law in the University of Heidelberg, the first of the institutions of learning in which the law of nations was taught and in which it has always been held in honor. A friend of Doctor Lieber's, and a frequent correspondent, he was so impressed with the Instructions that he translated them into German. Indeed, they had so completely demonstrated the possibility of codifying the law of nations that Bluntschli set himself to the task of codifying international law in its entirety—a result which he accomplished in a classic work published in 1868, under the title of *The Modern International Law of the Civilized States in the Form of a Code*. Practice and theory had joined hands, and the partisans of codification may say with pardonable exaggeration that these two great men stand on the opposite shores of the Atlantic as the Pillars of Hercules.

The codification of international law could now be undertaken on a larger scale, because models of its successful accomplishment were at hand; it was to be only a question of time until governments, passing

beyond the limited codification of Lieber, should undertake for themselves the larger task of Bluntschli.

The initiative was again to be American. The Second International Conference of the American Republics met in the city of Mexico from October 22, 1901, to January 22, 1902. The first of these conferences had met in the city of Washington in the fall of 1889 and had adjourned early in 1890. The international conference, as such, was due to the wisdom and foresight of James G. Blaine, Secretary of State of the United States, who, during an unfortunate war between the American Republics, had suggested a conference of their delegates in the city of Washington to devise means whereby peace—the peace of the Americas—should be kept through arbitration of their differences instead of resorting to force.

The members of the second conference felt that arbitration and peaceful settlement would require an agreement upon the principles of law to be observed and applied, and they therefore took up seriously the codification of the law of nations. They agreed to a convention by the terms of which the Secretary of State of the United States and the ministers of the American Republics accredited to Washington should appoint a committee of five American and two European jurists to draft, in the interval between the second and third conferences of the Americas, a code of public international law and a code of private international law to govern the relations of the American Republics.

As so often happens where a new subject is presented which has not been considered in advance, the convention was not ratified. There was, however, a strong feeling that the subject should be reexamined. Therefore, at the Third Pan American Conference, meeting at Rio de Janeiro in the summer of 1906, the question of the codification of international law was again taken up, and a convention was again adopted which had the good fortune to be ratified by some of the contracting parties, including the United States of America. As in the previous case, both private and public international law were to be included. A commission composed of a member from each of the ratifying republics, which were to be at least 12 in number, was to meet in Rio de Janeiro. The results of its labors were to be presented to the Fourth Pan American Conference for consideration. It frequently happens that treaties contracted in good faith are not ratified instanter, and that commissions to be appointed under them do not meet at the time specified. In this case the commission was to meet in 1907, but the date of meeting was postponed by the governing board of the Pan American Union, so that its first and only meeting was held in Rio de Janeiro in 1912. As was to be foreseen, its time was taken up with the preliminary

questions of form and content. Its work was divided among a number of committees with a request that the Governments should aid these bodies in their labors. But the world was on the eve of war. The World War, beginning in 1914 and pursuing its deadly course until 1918, rendered it impossible for the committees to continue their labors.

The call to renewed effort was again American. The treaty of Versailles, signed on June 28, 1919, going into effect on January 10, 1920, ended the war between Germany and the allied and associated powers. In Article XIV of the Covenant of the League of Nations, with which the treaty begins, the council of the league is directed to formulate a plan for a permanent court of international justice and to report to the members of the league. The council preferred to have the plan prepared by a body of jurists, and upon its request ten jurists, representing ten different nations—five large and five small—met at The Hague in the summer of 1920 and drafted a plan which, with sundry modifications, was accepted by the council and the assembly of the league in the course of the year. The court itself was formally installed in the Peace Palace of The Hague in 1922.

Mr. Elihu Root, one of the ten, felt the incompleteness of any plan which did not contemplate an agreement upon the law of nations and which should not provide for conferences of the nations in order to agree upon such further rules of conduct as international conditions should from time to time suggest and permit. He, therefore, proposed to the advisory committee of jurists, as that body was technically called, a series of peace conferences in succession to the first two at The Hague to restate the established rules of international law, to formulate and agree upon amendments and additions, to reconcile divergent views, and to consider the subjects not now adequately regulated by international law. It is a general opinion supported by practical experience that international conferences meeting without adequate preparation in advance are bound to be a disappointment. The advocates of The Hague conferences had learned this from actual experience and had recommended for future gatherings a preparatory committee of the powers, to meet some two years in advance, for the purpose of drawing up a program and a system of procedure. The members of the advisory committee were of one mind as to the desirability of conferences meeting at the earliest practicable moment.

Mr. Root felt also that the only way to convert questions hitherto considered political into judicial questions was to have the nations agree to submit them to a court, and that that could be best done or was only likely to be done when an agreement had been reached in advance upon the law to be applied for their determination. This

is the language of the Supreme Court of the United States, and as a sound lawyer Mr. Root had based his project upon its judgments. His proposal for further conferences was unanimously approved by the committee of jurists did not commend itself to the League of Nations, as it did not find it convenient at the time to consider this phase of the subject. However, the little seed had been sown which later was to appear upon the surface at Santiago and bring forth, as we of the American Institute hope, a rich harvest at Rio de Janeiro.

The Fifth International Conference of the American Republics was delayed because of the war, but it opened its doors at Santiago, Chile, on March 25, and adjourned May 3, 1923. Mr. Alejandro Alvarez, for many years past a convinced advocate of the codification of international law and secretary to the committee which proposed its codification for the Americas to the Second Pan American Conference (1901-1902), presented to the conference at Santiago a report containing projects of codification. The conference adopted the report and the projects as the basis of codification to be undertaken by a commission of the American Republics, to meet in Rio de Janeiro in 1925, and in which each Republic is to be represented by two jurists of its own choice. In pursuance of this resolution, the governing board of the Pan American Union addressed itself to the American Institute.

It is permissible to observe in this connection that the American Institute of International Law was one of the five bodies mentioned by Mr. Root in his proposal for international conferences "to prepare with such conference or collaboration *inter sese*, as they may deem useful, projects for the work of the conference to be submitted beforehand to the several Governments and laid before the conference for its consideration and such action as it may find suitable." And it is proper to add that the labors of the two Hague conferences were rendered possible by the inconspicuous but valuable work of the Institute of International Law suggested by Doctor Lieber as calculated to develop scientifically and practically the law of nations. In a lesser degree it may be said that Doctor Lieber is responsible for the American Institute of International Law, although it was founded in 1912 by two American publicists—one of the South and one of the North. And it will not be thought beyond the scope of this letter of transmittal to recall that the American Institute was created not only to bring the American publicists together and to enable them to cooperate in the broad domain of international relations, but also for the very purpose of aiding in the codification of the law of nations. This appears from an extract of a letter addressed to Mr. Root under date of June 3, 1911:

After reflection and much discussion we came to the conclusion that the best way to draw the leaders of thought together would be to create an institute of international law in which each country would have equal representation, say, five members; that the members of each country should organize at their capital a local society of international law; that the American Institute should hold at Washington the first of its periodic meetings to discuss scientific questions of international law, especially those relating to peace, so that little by little a code of international law might be drafted which should represent the enlightened thought of American publicists and be the result of their sympathetic collaboration.

Then turning to the purpose of the proposed institute, the letter continued:

Our opinion is that a code of international law undertaken by delegates of the American Governments would necessarily conform to the express instructions or to the practice of their Governments, and that the code thus drafted would be political rather than scientific; that a better code could be produced by the painstaking study of unofficial publicists, and that such a code produced under such circumstances would not merely be better in itself, but would stand a better chance of adoption in whole or in part by the Governments, either expressly at some Pan American conference or silently and piecemeal in the practice of the various foreign offices. In any event, it has seemed to us that the nonofficial cooperation of an equal number of publicists selected from the Republics composing the Pan American Union would be of the greatest service in the codification of international law by official delegates meeting in conference.

The date was not foreseen when this might happen. On the 2d of January, 1924, the invitation of the governing board of the Pan American Union enabled the American Institute of International Law to realize its self-imposed mission.

* * * * *

Admitting that the special meeting of the institute should have projects laid before it for the consideration of the members present, the question presented itself as to the form which these projects should assume. It was apparent to the executive committee of the institute that it would be too ambitious to have its labors take the form of a code, as that was to be the work of the International Commission of Jurists at Rio de Janeiro; but it was undoubtedly the prerogative of the members of the institute present at the special session of Lima to determine for themselves what questions they should recommend to the commission for codification, and the form, in which they should be submitted. The executive committee was unwilling to seem to deprive the members of the institute of their right to determine for themselves these important questions by selecting certain topics of the law of peace and excluding others. With considerable misgivings and much hesitation the committee decided to submit a series of projects covering those phases of the law of peace of present interest to the American Republics

and consonant with their enlightened practice. Following the example of The Hague conferences, the members of the committee chose to give to the projects the form of convention, stating in the preamble the reasons for the convention, and in the convention itself the principles of justice expressed in rules of law. There were practical as well as theoretical advantages in favor of this method; The Hague conventions were the model, and the conventions themselves could be arranged in any order which might please the members of the institute. In addition, if the commission of jurists should decide in favor of conventions instead of preparing a code with articles under appropriate titles and consecutive numbers, and if the Sixth International Conference of the American Republics, to which the labors of the commission are to be submitted at its session in Habana, should likewise adhere to the form of conventions, then it would be possible to amend an imperfect convention without disturbing the economy of the whole.

The members of the institute meeting in Lima approved the form of convention. With a single exception they approved the projects of convention, although making here and there an omission, a modification, or an addition which enhanced their value.

The executive committee has arranged the projects in a systematic manner, and has reconsidered matters of form as directed by the members of the institute present at Lima, and in pursuance of their express direction the amended projects are presented to the chairman of the governing board for transmission to the Pan American Union.

* * * * *

While the projects speak for themselves, it is deemed pertinent and permissible to make some observations of a general nature. It will appear that the projects are prefaced by a declaration of the rights and duties of nations, and that they are followed by a declaration renouncing in the future, on behalf of the American Republics, title to property obtained by wars of conquest. The projects of convention lying between these two declarations are the practical consequences of the rights and duties of nations as exemplified by the enlightened practice of the 21 American Republics; and while the last of these conventions approaches the threshold of war, the door to such a calamity is closed by the declaration against title by conquest, which, without abolishing war, seeks to prevent its occurrence by depriving the victor of material profit from its prosecution.

The first of these declarations, adopted January 6, 1916, was the first formal act of the first session of the American Institute of International Law, meeting for the first time at the city of Washington on December 29, 1915, in connection with and under the auspices of the Second Pan American Scientific Congress. It stated in six arti-

cles what its members considered to be the fundamental rights and duties of nations, having in mind the conception of nation obtaining in the western world. It seemed peculiarly appropriate at a time when the Old World was at war that the voice of the New should be heard speaking the language of law and of peace. Before its final drafting, the declaration had the approval of Mr. Elihu Root, who made some suggestions in its wording. Since its adoption by the institute it has made its way in the world and appears to be regarded as an important and generally accepted restatement of fundamental conceptions.

In thorough accord with the views of American publicists, irrespective of nationality, every proposition of the declaration is found embedded in the practice of the American Republics and sanctioned by their courts of justice wherever they have reached such tribunals. Only yesterday the Secretary of State of the United States confessed in public his faith in the declaration, saying, "We recognize the equality of the American Republics, their equal rights under the law of nations." And referring to the declaration drafted, as he said, by jurists representing the American Republics, not in terms of philosophy or of ethics, but in terms of law, and after quoting the first five articles of the declaration he stated in express terms that "this declaration embodies the fundamental principles of the policy of the United States in relation to the Republics of Latin America." And in the course of conversation with a North American member of the institute he expressed his willingness to have the declaration stand at the head of any code of international law to be adopted by the American Republics. This was also the view of the members of the institute present at Lima, and therefore the declaration of rights and duties, together with an addition by which the American Republics pledge themselves to the diffusion of the principles of international law, stands at the head of and ushers in those projects.

It is not without interest to mention the origin of the declaration with which the projects conclude. The First International Conference of the Americas met in the city of Washington in the latter part of 1889 and adjourned in the beginning of the next year. Its chairman was the Hon. James G. Blaine, then Secretary of State of the United States, who had called the conference into being, and who approved of its proceedings in behalf of the Government of the United States. In addition to a treaty of arbitration, the right of conquest was sought to be excluded from the practice of the American Republics. To this end the conference therefore earnestly recommended to the Governments represented in this epoch-making gathering:

First. That the principle of conquest shall not, during the continuance of the treaty of arbitration, be recognized as admissible under American public law.

Second. That all cessions of territory made during the continuance of the treaty of arbitration shall be void, if made under threats of war or the presence of an armed force.

Third. Any nation from which such cessions shall be exacted may demand that the validity of the cession so made shall be submitted to arbitration.

Fourth. Any renunciation of the right to arbitration made under the conditions named in the second section shall be null and void.

* * * * *

In submitting these imperfect projects of feeble hands, the executive committee recalls that 300 years to the month have passed since the first systematic treatise on *Rights and Duties of Nations in Times of War and Peace* was published by "the Miracle of Holland"—then an exile in France—to use the name given by Henry IV to Huig van Groot, lawyer and statesman, poet and historian, publicist, philosopher, and theologian. The committee further recalls that the masterpiece of 1625 grew out of a professional brief which Grotius had prepared some 20 years previously, when he was retained by clients in the prosecution of a suit at law. Its success was instantaneous, and the law of nations became a recognized branch of jurisprudence; it was taught as such in the universities; it was practised as such in the courts; it was meditated in the seclusion of the cloister, and in the study of the scholar. Treatise as it was, it nevertheless possessed the authority of a code.

Once again, the executive committee would call attention to the fact that the first successful example of the codification of a branch of international law was also a professional exercise, growing out of Doctor Lieber's restatement of the laws of war in the form of a code, at the request of the President of the United States, for the guidance of their armies in the field.

Therefore the members of the executive committee feel that they are dealing with law in a very real and practical sense, capable of statement in the form of a code, assuredly able to control the conduct of nations in times of peace, as it has been able to stay the hand of war. As they have invoked the example of Doctor Lieber in connection with codification, they are unwilling to close this, their report of progress, transmitting the accompanying projects of convention—the first ever prepared at the official request of Governments for the conduct of their international relations—without again mentioning the name of Grotius, and without the hope that in some way the labor of their hands may be considered as a homage to his memory on this three hundredth anniversary of the publication of the treatise of the master which made the principles of international law a branch of jurisprudence and a law to the nations.

Respectfully submitted on this 2d day of March, 1925.

JAMES BROWN SCOTT,
President of the American Institute of International Law.

ANNEX A

LETTER ADDRESSED TO THE MEMBERS OF THE AMERICAN INSTITUTE OF
INTERNATIONAL LAW, OCTOBER 12, 1924

PARIS, *October 12, 1924.*

DEAR AND HONORABLE COLLEAGUE:

We have the honor to inform you that a special session of the American Institute of International Law will be held at Lima, Peru, simultaneously with the meeting of the Third Pan American Scientific Congress, which will meet in that city December 20, 1924-January 6, 1925.

This special meeting has been called by the executive committee in order to enable the institute to comply with the request contained in the following resolution adopted by the governing board of the Pan American Union, at Washington, January 2, 1924:

Whereas the Fifth International Conference of American States adopted a vote of thanks for the results achieved by the American Institute of International Law; and

Whereas one of the purposes for which the American Institute of International Law has been established is to secure a more definite formulation of the rules of international law; and

Whereas the codification of the rules of international law is the most important task intrusted to the International Commission of Jurists; and

Whereas the labors of the American Institute of International Law will be of great service to the International Commission of Jurists in the fulfillment of the task assigned to it: Be it

Resolved by the governing board of the Pan American Union,
To submit to the executive committee of the American Institute of International Law the desirability of holding a session of the institute in 1924 in order that the results of the deliberations of the institute may be submitted to the International Commission of Jurists at its meeting at Rio de Janeiro in 1925.

There is inclosed herewith for your information a copy of the resolution of the Fifth International Conference of American States adopted at Santiago de Chile, proposing that the Congress of Jurists meet at Rio de Janeiro in the year 1925 for the purpose of proceeding to the codification of international law.

In transmitting to the president of the American Institute a copy of that resolution and also of the resolution adopted by the governing board of the Pan American Union on January 2, 1924, the Hon. Charles Evans Hughes, chairman of the governing board, said:

The Commission of Jurists, provided for by the Santiago resolution, is called upon to perform a very great international service, and

I feel convinced that in the performance of this service the American Institute of International Law can be most helpful. I hope, therefore, that the suggestions submitted by the governing board of the Pan American Union may have the approval of the executive committee of the American Institute of International Law. The establishment of such close cooperative relationship will serve to advance the work which the commission is called upon to perform and will thus bring us nearer to the accomplishment of the purpose for which the International Commission of Jurists was established.

In view of the great importance of the meeting, it is hoped that there will be a full attendance of the members of the institute at Lima in December next.

The executive committee of the institute is now engaged upon the formulation of drafts of projects relating to the codification of certain portions of international law, which will be submitted to the meeting at Lima for its consideration. It is hoped that the members of the institute will, in the meantime, be giving the matter their careful consideration, and come to the meeting prepared to submit suggestions as to the scope and content of the drafts to be recommended by the institute to the International Commission of Jurists, provided for by the Santiago resolution. Should, unfortunately, any members of the institute be unable to attend the meeting at Lima, it is requested that any suggestions or drafts that they may have to propose be sent to the executive committee of the institute in advance of the meeting.

These documents may be addressed to the president of the institute at No. 2 Jackson Place, Washington, D. C., United States of America.

We hope that you will be able to accept this invitation, which we deem of the greatest importance, and that you will apply yourself to this task in order that the American Institute may reap the benefit of your knowledge, your experience, and, above all, your good judgment.

We beg you to accept, sir and dear colleague, the assurance of our high consideration, and believe us to be,

Very sincerely yours,

ALEJANDRO ALVAREZ,
Secretary General.

JAMES BROWN SCOTT,
President.

ANNEX B

RESOLUTION CONCERNING THE CODIFICATION OF AMERICAN INTERNATIONAL LAW ADOPTED AT THE FIFTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, SANTIAGO, CHILE, APRIL 26, 1923

The Fifth International Conference of American States resolves:

1. To request each Government of the American Republics to appoint two delegates to constitute the Commission of Jurists of Rio de Janeiro;

2. To recommend that the committees appointed by the Commission of Jurists be reestablished;

3. To request these committees to undertake and to reconsider their work in the light of the experience of recent years and also in view of the resolutions of the Fifth International Conference of American States;

4. To designate a committee for the study of comparative civil law of all the nations of America in order to contribute to the formation of private international law, so that the results of this study may be utilized at the next meeting of the Commission of Jurists. It is understood that in the term "civil law" there are included the following topics: commercial law, mining law, law of procedure, etc. Criminal law may also be included therein;

5. To convene the International Commission of Jurists at Rio de Janeiro during the year 1925, the precise date to be determined by the Pan American Union after consultation with the Government of Brazil;

6. To recommend to this commission that in the domain of international law the codification should be gradual and progressive, accepting as the basis the project presented to the Fifth International Conference by the delegate of Chile, Mr. Alejandro Alvarez, entitled "La Codificación del Derecho Internacional en América";

7. The names of the delegates referred to in clause 1 should be communicated to the Government of Brazil and to the Pan American Union;

8. The resolutions of the Commission of Jurists shall be submitted to the Sixth International Conference of American States, in order that, if approved, they may be communicated to the Governments and incorporated in conventions;

9. To recommend to the Commission of Jurists, which is to prepare an American code of private international law, that, if it

should consider it advisable, it decide previously the juridical system to be adopted or systems to be combined as a point of departure for the rules tending to avoid or resolve conflicts of law, and that it instruct to that effect the special committees appointed to draft said code, and that it take into consideration the motions submitted to the Fifth Pan American Conference by the delegations of Argentine, Brazil, and Uruguay, as well as any others that may be suggested.

This recommendation shall be transmitted immediately to the respective Governments, in order that they may in turn be transmitted to the delegates who will form part of the committees on private international law.

ANNEX C

CONVENTION ESTABLISHING AN INTERNATIONAL LAW COMMISSION
ADOPTED AT THE THIRD INTERNATIONAL CONFERENCE OF AMERICAN
STATES, RIO DE JANEIRO, AUGUST 23, 1906 ¹

Their Excellencies, the Presidents of Ecuador, Paraguay, Bolivia, Colombia, Honduras, Panama, Cuba, Peru, the Dominican Republic, El Salvador, Costa Rica, the United States of Mexico, Guatemala, Uruguay, the Argentine Republic, Nicaragua, the United States of Brazil, the United States of America, and Chili;

Desiring that their respective countries should be represented at the Third International American Conference, sent thereto, duly authorized to approve the recommendations, resolutions, conventions and treaties that they might deem convenient for the interests of America, the following delegates: * * *

Who, after having communicated to each other their respective full powers and found them to be in due and proper form, have agreed to establish an international commission of jurists, in the following terms:

ARTICLE 1

There shall be established an international commission of jurists, composed of one representative from each of the signatory States, appointed by their respective governments, which commission shall meet for the purpose of preparing a draft of a code of private international law and one of public international law, regulating the relations between the nations of America. Two or more governments may appoint a single representative, but such representative shall have but one vote.

ARTICLE 2

Notice of the appointment of the members of the commission shall be addressed by the governments adhering to this convention to the Government of the United States of Brazil, which shall take the necessary steps for the holding of the first meeting.

Notice of these appointments shall be communicated to the Government of the United States of Brazil before April 1, 1907.

¹ Ratified by Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Panama, Peru, Salvador, United States, and Uruguay.

ARTICLE 3

The first meeting of said commission shall be held in the city of Rio de Janeiro during the year 1907. The presence of at least 12 of the representatives of the signatory States shall be necessary for the organization of the commission.

Said commission shall designate the time and place for subsequent sessions, provided, however, that sufficient time be allowed from the date of the final meeting to permit of the submission to the signatory States of all drafts or all important portions thereof at least one year before the date fixed for the Fourth International American Conference.

ARTICLE 4

Said commission after having met for the purpose of organization and for the distribution of the work to the members thereof, may divide itself into two distinct committees, one to consider the preparation of a draft of a code of private international law, and the other for the preparation of a code of public international law. In the event of such division being made, the committees must proceed separately until they conclude their duties, or else as provided in the final clause of article 3.

In order to expedite and increase the efficiency of this work, both committees may request the governments to assign experts for the consideration of especial topics. Both committees shall also have the power to determine the period within which such special reports shall be presented.

ARTICLE 5

In order to determine the subjects to be included within the scope of the work of the commission, the Third International Conference recommends to the commissions that they give special attention to the subjects and principles which have been agreed upon in existing treaties and conventions, as well as to those which are incorporated in the national laws of the American States, and furthermore recommends to the special attention of the commission the treaties of Montevideo of 1889 and the debates relating thereto, as well as the projects of conventions adopted at the Second International Conference of the American States held in Mexico in 1902, and the discussions thereon; also all other questions which give promise of juridical progress, or which tend to eliminate the causes of misunderstanding or conflicts between said States.

ARTICLE 6

The expense incident to the preparation of the drafts, including the compensation for technical studies made pursuant to article 4, shall be defrayed by all the signatory States in the proportion and form established for the support of the international bureau of the American Republics, of Washington, with the exception of the compensation of the members of the commission, which shall be paid to the representatives by their respective Governments.

ARTICLE 7

The Fourth International Conference of the American States shall embody in one or more treaties the principles upon which an agreement may be reached, and shall endeavor to secure their adoption and ratification by the nations of America.

ARTICLE 8

The Governments desiring to ratify this convention shall so advise the Government of the United States of Brazil, in order that the said Government may notify the other Governments through diplomatic channels, such action taking the place of an exchange of notes.

In testimony whereof the plenipotentiaries and delegates have signed the present convention and affixed the seal of the Third International American Conference.

Made in the city of Rio de Janeiro the 23d day of August, 1906, in English, Portuguese, and Spanish, and deposited with the Secretary of Foreign Affairs of the United States of Brazil, in order that certified copies thereof be made and sent through diplomatic channels to the signatory States.

ANNEX D

RESOLUTION OF THE ADVISORY COMMITTEE OF JURISTS MEETING AT THE HAGUE IN 1920, RECOMMENDING THE CODIFICATION OF INTERNATIONAL LAW

The advisory committee of jurists assembled at The Hague to draft a plan for a Permanent Court of International Justice.

Convinced that the security of States and the well-being of peoples urgently require the extension of the empire of law and the development of all international agencies for the administration of justice—

Recommends:

I. That a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable for the following purposes:

1. To restate the established rules of international law, especially, and in the first instance, in the fields affected by the events of the recent war.

2. To formulate and agree upon the amendments and additions, if any, to the rules of international law shown to be necessary or useful by the events of the war and the changes in the conditions of international life and intercourse which have followed the war.

3. To endeavor to reconcile divergent views and secure general agreement upon the rules which have been in dispute heretofore.

4. To consider the subjects not now adequately regulated by international law, but as to which the interests of international justice require that rules of law shall be declared and accepted.

II. That the Institute of International Law, the American Institute of International Law, the Union Juridique Internationale, the International Law Association, and the Iberian Institute of Comparative Law be invited to prepare with such conference or collaboration inter sese as they may deem useful, projects for the work of the conference to be submitted beforehand to the several Governments and laid before the conference for its consideration and such action as it may find suitable.

III. That the conference be named Conference for the Advancement of International Law.

IV. That this conference be followed by further successive conferences at stated intervals to continue the work left unfinished.

4. TEXTS OF PROJECTS

The committee of the American Institute of International Law designated at the meeting in Lima for the codification of American international law, and of which the executive committee of the institute forms a part, presents the following series of projects of conventions for the preparation of a code of public international law.

Each member signing reserves his opinion on individual points.

Habana, February 25, 1925.

JAMES BROWN SCOTT.

ALEJANDRO ALVAREZ.

LUIS ANDERSON.

PIERRE HUDICOURT.

JOSÉ MATOS.

RODRIGO OCTAVIO.

ANTONIO SÁNCHEZ DE BUSTAMANTE.

Project No. 1

PREAMBLE

Whereas:

1. Since the World War a new era has dawned in international life, an era marked by the eagerness of all Nations to insure the maintenance of a stable peace and to foster the spirit of mutual trust and cooperation which should exist between them;

2. Now, more than ever, the American Republics recognize two great duties: to cooperate with the other Nations of the world toward the realization of the above-mentioned objects, and to strengthen the bonds of solidarity between them which nature and history have happily established;

3. The American Republics are of the opinion that to preserve the peace it is necessary to study carefully the causes of war in order to prevent its possible outbreak; to base international relations upon justice while gradually extending the domain of law, and in every case peaceably to settle the disputes which may arise between Nations always with due respect to their independence, their liberty and their legal equality;

4. International law originated and developed on the European Continent and has thence been extended to all the Nations of the world, but outside of Europe certain rules or principles have been modified in conformity with the special conditions prevailing in certain regions;

5. During the nineteenth century, and especially since the World War, considerable changes have taken place in the life of the peoples, which have had a natural reaction upon international relations;

6. It is therefore necessary to state clearly the principles and rules of international law in force, and to indicate their lacunæ and divergences in order thereupon to frame rules and regulations supplying the omissions and correcting the divergences, bringing both principles and rules into harmony with the new conditions of international life and the requirements of public opinion. To attain this end such rules and regulations must be based upon the idea of cooperation, international duty, and the common interests;

7. After this work of examination and reconstruction of international law, it is necessary to undertake its codification, but in a gradual and progressive manner, and in such a form as not to impede the free development of the law;

8. In view of the importance of the American Republics, there should exist in future a closer cooperation between them and the Nations of the world, for the purpose of determining the principles and rules of universal international law; but it is incumbent upon the American Republics to determine among themselves alone the rules which shall regulate simply their reciprocal relations;

9. The American Republics are more interested in regulations concerning the peaceful relations of the Nations and neutrality than in those concerning war, in the hope that the latter has happily and forever vanished from the American Continent;

10. In accordance with the preceding considerations, the American Republics desire to undertake the codification of international law resolved upon at the Pan American conferences;

Therefore, the American Republics have agreed to frame a series of conventions regulating the following subjects:

Project No. 2

GENERAL DECLARATIONS

1. By the act of incorporating themselves into the community of Nations, the American Republics recognized as applicable to themselves the International Law in force in Europe. But at the same time and thereafter they have maintained the right to reject or to protest against the rules in force in Europe which were in contradiction to their independence and sovereignty; they have maintained the power to proclaim other principles or rules more in harmony with the new conditions of their existence and more favorable to their free development. They have claimed especially the right to establish fundamental bases for American international society in conformity with their necessities and aspirations.

2. The American Republics declare that matters pertaining especially to America should be regulated in our Continent in conformity with the principles of universal International Law, if that be possible, or by enlarging and developing those principles or creating new ones adapted to the special conditions existing on this Continent.

3. By American International Law is understood all of the institutions, principles, rules, doctrines, conventions, customs, and practices which, in the domain of international relations, are proper to the Republics of the New World.

The existence of this Law is due to the geographical, economic, and political conditions of the American Continent, to the manner in which the new Republics were formed and have entered the international community, and to the solidarity existing between them.

American International Law thus understood in no way tends to create an international system resulting in the separation of the Republics of this hemisphere from the world concert.

Project No. 3

DECLARATION OF PAN-AMERICAN UNITY AND COOPERATION

The Representatives of the Twenty-One American Republics, duly authorized by their respective Governments, and acting under an abiding sense of its fundamental and far-reaching importance, formally and unreservedly accept in their behalf the declaration of those principles of Pan American Unity and of Pan American Cooperation which must ever guide the Americas in their mutual relations, made by Mr. Elihu Root, as Secretary of State of the United States, in the presence of the Official Representatives of the Americas at the Third Pan American Conference held at Rio de Janeiro in 1906:

I. We wish for no victories but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

The Representatives of the Twenty-One American Republics further accept on behalf of their respective Governments the declaration of the spirit which should animate the American Republics in the settlement of the differences between and among them made by Mr. Elihu Root, as Secretary of State of the United States, in the presence of the Official Representatives of The Americas, on laying the cornerstone of the Palace of the American Republics in Washington, in 1908:

II. There are no international controversies so serious that they can not be settled peaceably if both parties really desire peaceable settlement, while there are few causes of dispute so trifling that they can not be made the occasion of war if either party really desires war. The matters in dispute between nations are nothing; the spirit which deals with them is everything.

Project No. 4

FUNDAMENTAL BASES OF INTERNATIONAL LAW

Whereas it is proper to determine clearly for the future the fundamental bases of International Law, and an end should be put to the uncertainty and the diversity of doctrines heretofore existing on this subject;

Therefore, the American Republics have agreed upon the following convention relative to the "*Fundamental Bases of International Law*":

SECTION I

NATURE AND EXTENT OF INTERNATIONAL LAW

ARTICLE 1

The reciprocal relations of Nations forming the international community are governed by the principles, rules, customs, practices, or usages which are recognized as applicable and which taken together constitute International Law.

ARTICLE 2

In addition to those matters which heretofore have come within the domain of International Law, there belong other new matters arising out of the exigencies of modern social life and the international rights of individuals, namely, the rights which natural or juridical persons can invoke in each Nation in the cases expressly provided for in the Convention on this subject.

ARTICLE 3

International Law forms a part of the national legislation of every country. In matters which pertain to it, it should therefore be applied by the national authorities as the law of the land.

ARTICLE 4

National laws should not contain provisions contrary to International Law.

ARTICLE 5

Violations of the stipulations contained in the preceding articles by the authorities of a country make the latter responsible for the injuries which the said violations may cause to other Nations or their nationals.

SECTION II

ELEMENTS OF GENERAL INTERNATIONAL LAW

ARTICLE 6

International principles, rules, customs, practices, or usages are either *general* or *particular*.

Those followed by all or nearly all Nations of the world are *general*.

The *specific* principles, rules, or usages may be:

- (a) Continental,
- (b) Regional,
- (c) Particular to a school,
- (d) Special,
- (e) National, or
- (f) Constitute rules of civilization.

(a) *Continental* principles, rules, and usages are those recognized by the Nations of a continent as intended to regulate their reciprocal relations; also those principles or rules proclaimed by them for observance by all the countries of the continent, for example, the rules called American Public Law.

(b) Principles and rules established or customs followed by a certain group of Nations for the regulation of their reciprocal relations are *regional*.

(c) Rules *particular to a school* are those followed or professed by a group of Nations belonging to what is called a School of International Law.

(d) *Special* rules are those established by agreement between two or more countries to regulate their reciprocal relations in certain matters.

(e) *National* rules are rules which each country enacts on matters which International Law accords them the power to establish.

(f) Rules of *civilization* are those which are intended for application only to certain semicivilized populations.

SECTION III

SOURCE; OBLIGATORY FORCE IN AMERICA OF INTERNATIONAL RULES,
CUSTOMS, OR PRACTICES; ABROGATION

ARTICLE 7

International rules on the American Continent are derived from the express consent of the American Republics, manifested by conventions and other international acts, duly ratified by them, and having as object the establishment of a norm of conduct to be followed as obligatory.

These rules may also be derived from custom recognized as obligatory by the majority of those Republics.

ARTICLE 8

The rules established by convention among the American Republics bind only those which have ratified or adhered to them. But if those rules have a fundamental character and have been accepted by the great majority of American Republics, any one of the latter may request the Pan American Union to bring about an exchange of views in order that these rules may, if possible, be accepted by all.

The rules established by convention can be abrogated only by an express declaration of the American Republics or by the adoption, likewise formal, of a rule to the contrary.

ARTICLE 9

In the absence of rules established by convention, recourse shall be had to rules founded on custom.

ARTICLE 10

In the absence of rules of custom, recourse shall be had to the more or less general practices or usages of the American Republics.

Such practices or usages can only be invoked by the republics observing them.

SECTION IV

DEVELOPMENT AND INTERPRETATION OF THE RULES OF INTERNATIONAL
LAW IN AMERICA

ARTICLE 11

In the absence of rules established by convention, of customs, or usages of the American Republics, recourse shall be had to the rules established by the Conventions signed by the said Republics at the Pan American Conferences which have not yet been ratified but whose ratification is pending.

Such rules, although they lack obligatory force, should be considered as a manifestation of the legal consciousness of the New World.

ARTICLE 12

In the absence of even unrati~~fi~~ed conventions recourse shall be had, in the international relations of American Republics, to the rules of universal international law in so far as they are not contrary to the American principles indicated above.

ARTICLE 13

In the absence of positive principles or rules, the relations between the American Republics shall be governed by the general principles of International Law; and in the absence of those principles, by the precepts of international justice.

ARTICLE 14

The general principles of International Law are those arising from the rules of that Law in force, especially when they have been recognized by diplomatic acts or arbitral awards.

ARTICLE 15

The precepts of international justice are those which public opinion recognizes should govern the relations between Nations.

Those precepts must have been expressed in such acts as *vœux* of international conferences, resolutions of recognized scientific institutions, or opinions of contemporary publicists of authority.

SECTION V

VALUE OF NATIONAL LAWS, DIPLOMATIC PRECEDENTS, ARBITRAL AWARDS, AND OPINIONS OF PUBLICISTS

ARTICLE 16

National laws enacted by American Republics on matters authorized by International Law should be respected on the territory of the legislating Republic by all other countries, provided they do not contain provisions contrary to that Law.

A national law concerning matters not authorized by International Law, but which is not contrary thereto, shall not bind the other Nations. However, these Nations may take advantage of the part thereof favorable to themselves during the time that such law is in force.

ARTICLE 17

The practices of courtesy usually followed may be invoked by any country whatsoever, but conformity thereto may not be insisted upon. In no case may refusal be considered an offense.

ARTICLE 18

Diplomatic precedents, arbitral awards, decisions of national courts in international matters, as well as the opinion of publicists of authority, have value only in so far as they throw a light upon existing law or upon the other elements mentioned above to which recourse must be had in the absence of legal rules.

ARTICLE 19

International rules should always be developed and interpreted in a spirit of international solidarity and general utility.

SECTION VI

SANCTIONS OF INTERNATIONAL RULES IN AMERICA

ARTICLE 20

The observance of international law rests principally upon the honor of the American Republics, under the sanction of public opinion.

ARTICLE 21

American Republics have the right to protest against violations of International Law, even if those violations do not directly affect them.

ARTICLE 22

American Republics directly injured by a violation of International Law may address themselves to the Pan American Union in order that it may bring about an exchange of views on the matter.

They may also have recourse to moral sanctions, such as an appeal to public opinion, the publication of the official correspondence showing wherein the Nation was at fault, a request for arbitration, the severance of diplomatic relations.

Project No. 5

NATIONS

The American Republics * * *, desirous of stating the elements which enter into the international conception of the Nation, have decided to adopt the following Convention:

ARTICLE 1

A Nation as a person of international law should possess these elements:

1. Population.
2. Territory. Nomadic tribes or peoples are thus excluded from this category.
3. A government which represents the sovereign will.
4. The power of entering into relations with other Nations.
5. A degree of civilization such as to enable it to observe the principles of international law.

In this conception all the American Republics are Nations.

ARTICLE 2

Nations are legally equal. The rights of each do not depend upon the power at its command to insure their exercise. Nations enjoy equal rights and equal capacity to exercise them.

Project No. 6

RECOGNITION OF NEW NATIONS AND OF NEW
GOVERNMENTS.

Whereas it is useful to define the scope as well as the conditions of the recognition of new Nations and of new Governments,

The American Republics have concluded the following Convention :

ARTICLE 1

The recognition of a Nation by an American Republic has for its object to accept its personality with all the rights and all the duties established by international law.

The recognition of the Government of a Nation has merely for its object to enter into diplomatic relations with the said Nation, or to continue the relations existing.

ARTICLE 2

The political existence of a Nation is independent of any recognition. It has consequently the enjoyment of the fundamental rights, and it is bound by the fundamental obligations mentioned in the "Declaration of the Rights and Duties of Nations."

ARTICLE 3

Recognition of a new Nation should be made unconditionally, and it may be express or tacit. Tacit recognition results from any act of an American Republic implying the intention to recognize the new Nation.

ARTICLE 4

Every legally constituted Government has the right to be recognized. Refusal of recognition by one of the Republics may be considered an unfriendly act.

ARTICLE 5

Every abnormally constituted Government may be recognized if it is capable of maintaining order and tranquillity and is disposed to fulfill the international obligations of the Nation.

DECLARATION OF RIGHTS AND DUTIES OF NATIONS

Whereas the municipal law of civilized nations recognizes and protects the right to life, the right to liberty, the right to the pursuit of happiness, as added by the Declaration of Independence of the United States of America, the right to legal equality, the right to property, and the right to the enjoyment of the aforesaid rights; and

Whereas these fundamental rights, thus universally recognized, create a duty on the part of the peoples of all nations to observe them; and

Whereas, according to the political philosophy of the Declaration of Independence of the United States, and the universal practice of the American Republics, nations or governments are regarded as created by the people, deriving their just powers from the consent of the governed, and are instituted among men to promote their safety and happiness and to secure to the people the enjoyment of their fundamental rights; and

Whereas the nation is a moral or juristic person, the creature of law, and subordinated to law as is the natural person in political society; and

Whereas we deem that these fundamental rights can be stated in terms of international law and applied to the relations of the members of the society of nations, one with another, just as they have been applied in the relations of the citizens or subjects of the States forming the Society of Nations; and

Whereas these fundamental rights of national jurisprudence, namely, the right to life, the right to liberty, the right to the pursuit of happiness, the right to equality before the law, the right to property, and the right to the observance thereof are, when stated in terms of international law, the right of the nation to exist and to protect and to conserve its existence; the right of independence and the freedom to develop itself without interference or control from other nations; the right of equality in law and before law; the right to territory within defined boundaries and to exclusive jurisdiction therein; and the right to the observance of these fundamental rights; and

Whereas the rights and the duties of nations are, by virtue of membership in the society thereof, to be exercised and performed

in accordance with the exigencies of their mutual interdependence expressed in the preamble to the Convention for the Pacific Settlement of International Disputes of the First and Second Hague Peace Conferences, recognizing the solidarity which unites the members of the society of civilized nations—.

The American Republics have agreed to approve the following:

DECLARATION OF THE RIGHTS AND DUTIES OF NATIONS

I. Every nation has the right to exist, and to protect and to conserve its existence; but this right neither implies the right nor justifies the act of the State to protect itself or to conserve its existence by the commission of unlawful acts against innocent and unoffending States.

II. Every nation has the right to independence in the sense that it has a right to the pursuit of happiness and is free to develop itself without interference or control from other States, provided that in so doing it does not interfere with or violate the rights of other States.

III. Every nation is in law and before law the equal of every other nation belonging to the society of nations, and all nations have the right to claim and, according to the Declaration of Independence of the United States, "to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them."

IV. Every nation has the right to territory within defined boundaries and to exercise exclusive jurisdiction over its territory, and all persons whether native or foreign found therein.

V. Every nation entitled to a right by the law of nations is entitled to have that right respected and protected by all other nations, for right and duty are correlative, and the right of one is the duty of all to observe.

VI. International law is at one and the same time both national and international; national in the sense that it is the law of the land and applicable as such to the decision of all questions involving its principles; international in the sense that it is the law of the society of nations and applicable as such to all questions between and among the members of the society of nations involving its principles.

VII. The American Republics recognize it as a fundamental duty to furnish instruction to their nationals in their international obligations and duties, as well as in their rights and prerogatives, thus creating the "international mind" and the public opinion which shall in the future obtain by persuasion what force has failed to gain in the past.

FUNDAMENTAL RIGHTS OF AMERICAN REPUBLICS

Whereas: 1. Since their independence the American Republics have proclaimed and maintained certain principles destined to secure their independence, liberty, and unrestricted development;

2. Beginning with the nineteenth century the said Republics have amplified and developed those principles by their express or tacit consent;

3. It is necessary to state clearly those fundamental principles and at the same time extend them to their reciprocal relations;

The American Republics have concluded the following project of Fundamental Rights of the Republics of the American Continent:

ARTICLE 1

The following principles are declared to constitute American Public Law and shall be applied and respected in America by all Nations:

1. The American Republics, equal before international law, have the rights inherent in complete independence, liberty, and sovereignty. Such rights can in no way be restricted to the profit of another Nation, even with the consent of the interested American Republics.

2. No American Republic can cede any part whatever of its territory to a non-American Nation, even if it consents to do so.

3. No nation shall hereafter, for any reason whatsoever, directly or indirectly, occupy even temporarily any portion of the territory of an American Republic in order to exercise sovereignty therein, even with the consent of the said Republic.

4. No Nation has a right to interfere in the internal or foreign affairs of an American Republic against the will of that Republic. The sole lawful intervention is friendly and conciliatory action without any character of coercion.

ARTICLE 2

In case of violation of the provisions of the preceding articles by one or more Nations; or, in general, in case of menace, offense, or acts of violence, individual or collective, committed by those Nations with respect to an American Republic, the continental solidarity will be affected thereby, and any American Republic may address the Pan American Union with the object of bringing about an exchange of views on the subject.

Project No. 9

PAN AMERICAN UNION

Whereas: 1. It is necessary to organize American international life on the basis of cooperation and in such a way that this organization may reflect the legal consciousness and opinion of the Republics of the New Continent;

2. The legal equality of all American Republics and the mutual respect for their independence and sovereignty must form the foundation of an organization of this nature;

3. The Pan American Union, perfected in the course of the various conferences held by the American Republics, must be the framework for the said organization;

4. At the Pan American Conferences, especially the Fifth, the need has been recognized to make closer the union of the Republics of the New World, thereby strengthening their common interests:

The American Republics have agreed to complete the organization of the Pan American Union by means of the following Convention:

ARTICLE 1

The Pan American Union is a permanent organ of conciliation and cooperation between the Republics of the New World:

All the American Republics have the right to be represented in the Union on the basis of equality.

ARTICLE 2

In addition to the functions conferred upon it by the various conventions, the Pan American Union should:

1. Serve as an organ of communication between the various American Governments, for the purposes of the present Agreement;

2. Publish the treaties or other international acts subscribed to by the American Republics among themselves or with other countries;

3. Compile and distribute information and publications relative to the commercial, industrial, agricultural and educational development, as well as the general progress of the American Republics;

4. Assist in the development of commercial and intellectual relations and of a more perfect understanding between the American Republics;

5. Act as a Permanent Commission of the International Conferences of American States; keep the records and archives; secure the ratification of the treaties and conventions, as well as the observance

of the resolutions adopted; and prepare the program and regulations of each Pan American Conference;

6. Present to the various Governments, upon the occasion of each new Conference, a report upon the work of the Union since the last Conference; furnish special reports upon questions which may have been referred to it;

7. Perform in general such functions as shall be intrusted to it by the Pan American Conferences, or by the Governing Board of the Pan American Union, by virtue of the powers conferred upon it by the present Convention.

To carry out these different purposes, the Governing Board of the Pan American Union shall have the power to create such administrative divisions or offices as it may deem necessary.

ARTICLE 3

In carrying out its work the Pan American Union will have the cooperation of the following Permanent Commissions, designated by the Governing Board:

1. Commission for the development of diplomatic relations and the codification of international law.

2. Commission for the development of economic and commercial relations between the American Republics, and in general for securing cooperation between them.

3. Commission for the study of all matters relating to the international organization of labor in America.

4. Commission for the study of questions relating to hygiene in the American Republics.

5. Commission for the development of intellectual cooperation, with special reference to cooperation between universities.

ARTICLE 4

The Pan American Union may appoint a special commission, which shall have the following duties:

1. To see that a maritime map of the American Continent is drawn, on which shall be indicated the different zones to be distinguished for navigation, especially the territorial sea and the part contiguous thereto. This map should also indicate the regions to which the present Convention is not applicable, particularly the antarctic and polar regions.

2. To see to the observance of the most absolute freedom of navigation in accordance with this Treaty, and to see that no Nation interferes with it even indirectly. Every violation which appears to be established by the special commission shall be communicated to the Pan American Union.

3. To recommend to the Pan American Union any other measure relating to maritime navigation which it may deem useful.

4. To register and publish the laws and regulations on the subject of navigation enacted by the American Republics.

5. To study the best method of making the provisions of the laws and regulations referred to in the preceding paragraph uniform.

ARTICLE 5

In the capital of each of the American Republics there shall be established Bureaus attached to the Ministry of Foreign Affairs or else Commissions composed as far as possible of former delegates to the International Conferences of American States. These Bureaus or Commissions shall have the following duties:

(a) They shall endeavor to obtain the ratification of the treaties and conventions, and to secure compliance with the resolutions adopted by the Conferences.

(b) They shall furnish the Pan American Union information whenever it may request it for the preparation of its work.

(c) They shall present upon their own initiative projects which they may consider adapted to the purposes of the Union, and shall exercise the functions which the respective Governments in view of these purposes may confer upon them.

ARTICLE 6

The American Republics have the right to be represented in the Pan American Union and at the International Conferences of American States. The government of the Pan American Union shall be vested in a Board composed of the diplomatic representatives of the American Republics accredited to the Government of the United States of America, and the Secretary of State of that country. The American Republics which for any reason whatever may not have a diplomatic representative accredited to the Government of the United States of America may appoint a special representative to the Board of the Union. In case of temporary hindrance, leave of absence or illness, of the Ambassador, Minister, or Chargé d'Affaires accredited at Washington, the interested Republic may appoint a special representative to the Board. This representative may be selected from among the other members of the Board, in which case such member shall have a vote for each Republic that he represents.

The Board shall elect its President and Vice President.

ARTICLE 7

The Governing Board shall appoint the following officers:

1. A Director General, who shall have charge of the administration of the Pan American Union, with power to promote its development

as far as possible and in accordance with the provisions of the present Convention and with the regulations and resolutions of the Board. The Director General, who shall be responsible to the Board, shall attend in an advisory capacity the meetings of the Governing Board, of the Commissions, and of the International Conferences of American States. He shall furnish them such information as they may need.

2. An Assistant Director, of different nationality from that of the Director, who shall act as Secretary of the said Governing Board.

The Governing Board shall determine the conditions relative to the appointment of the personnel, as well as their duties.

The Director General shall prepare, with the approval of the Governing Board and in accordance with the present Convention, the internal regulations by which the various services of the Pan American Union must be governed.

ARTICLE 8

The Director General of the Pan American Union shall present at the regular session of the Governing Board in November of each year a detailed budget of the expenses of the next fiscal year. This budget, after being approved by the Governing Board, shall be communicated to the Governments members of the Union, with an indication of the quota, fixed in proportion to population, which each Government must pay into the Treasury of the Pan American Union. This payment must be made not later than the first of July of the following year.

The Governing Board shall appoint from among its members a Committee charged with examining, on the date to be determined by the Board, the accounts of the expenditures of the Union, in conformity with the financial arrangements established by the Regulations.

ARTICLE 9

Matters submitted for study to the Pan American Union shall be the subject of publications, to be made under its auspices and with the previous consent of the Governing Board. In order to assure the greatest possible accuracy in these publications, the Governments of each Republic shall transmit directly to the Library of the Pan American Union two copies of all official documents or publications which may relate to matters connected with the purposes of the Union.

The correspondence and publications of the Pan American Union shall be carried free of charge by the mails of the American Republics.

Project No. 10

NATIONAL DOMAIN

The American Republics * * *, desirous of stating in conventional form the nature and extent of the elements forming their national domain, have agreed upon the following articles:

Section I. General provisions

ARTICLE 1

Every nation exercises its sovereignty in an area of land and water within definite boundaries and in the space above the said area.

ARTICLE 2

The boundaries of a nation may be natural or artificial. They are natural, such as the free sea, or artificial, such as a parallel of latitude.

ARTICLE 3

If a range of mountains constitutes the boundary, the line of demarcation follows the watershed.

ARTICLE 4

If the boundary is a nonnavigable river, the middle shall be the dividing line, if there is no provision or practice to the contrary.

If the river is navigable the boundary is, in default of an agreement or practice to the contrary, a line through the middle of the deepest or most navigable channel.

Section II. The territorial sea

ARTICLE 5

By territorial sea is meant the extent of the ocean which washes the coasts of the American Republics to a distance of — marine miles measured from the lowest point of low-water mark.

ARTICLE 6

For bays extending into the territory of a single American Republic the territorial sea follows the sinuosities of the coast, except

that it is measured from a straight line drawn across the bay at the point nearest the opening into the sea where the two coasts of the bay are separated by a distance of — marine miles, unless a greater width shall have been sanctioned by continued and well-established usage.

In the case of an international bay whose coasts belong to two or more different countries, the territorial sea follows the sinuosities of the coast, unless there exists a convention to the contrary.

ARTICLE 7

With regard to islands and keys possessed by an American Republic outside or within the limits of its territorial sea, each shall be surrounded by a zone of territorial sea coming within the definition of Article 5.

In case of an archipelago, the islands and keys composing it shall be considered as forming a unit and the extent of territorial sea referred to in Article 5 shall be measured from the islands farthest from the center of the archipelago.

ARTICLE 8

The American Republics exercise the right of sovereignty not only over the water but over the bottom and the subsoil of their territorial sea.

By virtue of that right each of the said Republics alone can exploit or permit others to exploit all the riches existing within that zone.

The American Republics may also enact all laws and regulations which they may deem necessary to assure the observance of measures of hygiene, security, police, and customs in so far as they are in accordance with the international conventions concluded by them. The said laws and regulations should be communicated to the Pan American Union.

Section III. Straits and natural channels connecting two seas

ARTICLE 9

In straits and natural channels connecting two open seas and separating two or more Republics—either on two continents, a continent and an island, or two islands—the limit of the territorial waters of each Republic shall be the middle of the strait or channel separating them, if the width of this is less than — miles. In such case each one of the said Republics has within its own zone the right of sovereignty and jurisdiction which it possesses over its territorial sea.

ARTICLE 10

If the strait or channel is more than — miles in width, the right of the riparian American Republics shall extend for — miles from their respective coasts. Outside this limit navigation shall be entirely free, but only if each entrance to the strait is more than — miles in width; otherwise, navigation in the said zone shall be subject to the regulations of the riparian Republics.

ARTICLE 11

If the strait or channel separates two coasts of the same Republic, the said Republic shall be the sole proprietor and navigation shall be subject to its regulations.

Section IV. Canals

ARTICLE 12

Canals constructed for the purpose of connecting two seas by a Republic exercising sovereignty on both banks or by two or more adjacent Republics shall be governed by the regulations drawn up by the said Republics in accordance with the principle of free navigation. These regulations shall be communicated to the Pan American Union.

ARTICLE 13

If the canal has been constructed by an American Republic or by a corporation on the territory of another Republic and with the consent of the latter, its régime shall be determined by the act of concession and communicated to the Pan American Union.

Section V. Lakes

ARTICLE 14

Lakes lying entirely within the territory of an American Republic shall form a part of its national domain, even if their waters flow into a sea, strait, or international river.

ARTICLE 15

When a lake separates two or more Republics, these Republics shall have a common right to the waters of the said lake. Regulations pertaining to the use of the lake should be drawn up with the mutual consent of the riparian Republics, who shall communicate them to the Pan American Union.

Project No. 11

RIGHTS AND DUTIES OF NATIONS IN TERRITORIES IN DISPUTE ON THE QUESTION OF BOUNDARIES

Whereas: 1. Disputes exist relative to more or less extensive zones of territory, for the reason that it has been hitherto impossible to trace definitive frontiers or to determine clearly territorial rights in the said zones;

2. There must be established for such case, and for such case only, regulations concerning the rights and duties in the said zones of the American Republics making claim thereto;

The American Republics have agreed to conclude the following Convention:

ARTICLE 1

In case two or more Republics claim that the same zone of territory belongs to them because the definitive frontier has not yet been traced, the rights and duties of the said Republics in the contested zone shall be regulated by agreements establishing a *modus vivendi*, which shall permit the interested parties to exercise police power, care for the hygiene, and insure public tranquillity in the said zone.

These agreements shall also include everything pertaining to commerce in the said territory and to navigation on the rivers or lakes therein.

ARTICLE 2

In the absence of agreement between the interested Governments, and if the controversy has been submitted to an arbitrator, or if there is a Commission charged with fixing the frontier, the arbitrator or the Commission shall propose to the respective Governments by way of *good offices* the provisional measures referred to in the preceding article, without that implying any prejudice in the solution of the dispute.

ARTICLE 3

In the absence of a *modus vivendi* the following rules shall be observed:

1. Each of the Republics claiming a zone must abstain from exercising therein any act of sovereignty, even the most necessary acts,

unless the exercise of those acts does not injure the interests of the other parties to the dispute.

2. If the two Republics in dispute are in possession of the contested zone, they must respect the sovereign acts that each may have performed before the dispute arose. But once the dispute has been declared, they must abstain from new acts of sovereignty within the said zone.

3. If one of the Republics is in possession of a zone of territory claimed later by another, the one in possession of the contested zone must continue to exercise sovereignty while the dispute is being settled.

4. Offenses committed in the zone of disputed territory must be tried by the judicial authority of that one of the interested Republics which may first have taken cognizance of the criminal act.

ARTICLE 4

Provisional occupation of the disputed zone by one of the Republics, or the exercise of acts of sovereignty referred to in the preceding article, shall not affect the definitive sovereignty which shall later have to be established over the said zone upon the settlement of the dispute.

ARTICLE 5

If an American Republic constructs works or proceeds to carry on work or make contracts in a territorial zone which is contested by another, and which is assigned to the latter in the settlement of the dispute, the former shall receive from the second an indemnity equivalent to the value of the labor and works done.

It shall be the same if the works have been constructed and the labor executed while the territory was in litigation.

ARTICLE 6

No Republic can cede to another rights which it may claim to have over the disputed zone of territory without the consent of the other Republic or Republics, parties to the case.

Project No. 12

JURISDICTION

The American Republics * * * convinced of the importance of establishing in conventional form the principles upon which is based the right of exclusive jurisdiction of each of them within its domain, and the exceptional cases in which jurisdiction may be exercised in the interest of justice beyond their boundaries, have agreed upon the following articles:

ARTICLE 1

Jurisdiction is the right and power of the Nation to exercise its sovereign will within its territory.

ARTICLE 2

As each sovereign Nation exercises exclusive jurisdiction, any derogation from its exercise must be derived from the consent of the Nation itself.

ARTICLE 3

The jurisdiction of a Nation being coterminous with its boundaries, it is presumed to legislate for itself alone, and its laws have no effect in any foreign country or portion of territory subject to the jurisdiction of another Nation, unless in accordance with the principles of private international law.

ARTICLE 4

Nationals of the American Republics are subject to the jurisdiction of the country in which they are found, and may be punished by the latter for offenses which they commit.

However, a Nation may render its nationals liable for offenses against its laws committed in a foreign jurisdiction.

ARTICLE 5

The entry of merchant vessels into the ports and bays of an American Republic shall be free in time of peace, except for reasons of security or of hygiene.

In the event of refusal it should be communicated forthwith to the Pan American Union.

ARTICLE 6

The entry of warships shall depend entirely upon the consent of the Republic, sovereign of the port. In time of peace such consent shall be presumed.

Merchant vessels which enter and remain in the jurisdictional waters of a Republic shall be subject to its regulations.

Ships of war shall not be subject to the jurisdiction of the Republic in which they are stationed, but the said Republic may, if it deem it convenient to the national interest, order or compel them to depart.

In case of necessity every warship may enter any port whatsoever without being forthwith subject to the local laws and regulations. It shall not be subject to the said laws and regulations until the expiration of a reasonable time.

ARTICLE 7

The law of each Nation applies to its merchant vessels on the high seas, including passengers and crew, and the property of the Nation and of its nationals found thereon.

ARTICLE 8

Merchant vessels within the territorial waters of a Nation shall be subject to the administrative and criminal laws and procedure of the said Nation.

ARTICLE 9

Merchant vessels of all countries may pass freely through the territorial sea, subject to the laws and regulations of the Republic to which the said sea belongs.

Neither warships nor merchant vessels can sojourn in the territorial sea, or fish there, or commit any act involving the violation of those laws and regulations, without the authorization of the said Republics.

ARTICLE 10

Merchant vessels which violate the provisions of the present convention or the laws and regulations of an American Republic in regard to its territorial sea are subject to the jurisdiction of the said Republic.

Such Republic has the right to continue, within the zone contiguous to its territorial sea, the pursuit of a vessel commenced within its territorial waters, and to bring the vessel before its courts.

ARTICLE 11

Crimes committed on board a merchant vessel in the territorial sea belonging to an American Republic shall be subject to the jurisdiction of the country to which the vessel belongs, unless they disturb the order and public tranquillity of the region where they have been committed. In this case they shall be subject to the authority of the Republic where the act in question was committed.

ARTICLE 12

The American Republics may extend their jurisdiction beyond the territorial sea, parallel with such sea, for an additional distance of * * * marine miles, for reasons of safety and in order to assure the observance of sanitary and customs regulations.

ARTICLE 13

The American Republics whose coasts are washed by the waters of the sea and which possess a navy or mercantile marine, shall have the right to occupy an extent of the high sea contiguous to their respective territorial sea necessary for the more or less permanent establishment of the following installations, provided they are in the general interest:

1. Bases for non-military airships and dirigibles;
2. Wireless telegraph stations;
3. Stations for submarine cables;
4. Lighthouses;
5. Stations for scientific exploration;
6. Refuge stations for the shipwrecked.

ARTICLE 14

It is expressly forbidden to fortify the installations referred to in the preceding article and to use them, even indirectly, as bases of supply for warships, military airplanes and dirigibles, or for submarines.

ARTICLE 15

Outside the territorial sea and the contiguous zone the vessels of all countries shall enjoy absolute freedom and equality in navigation, transit, and fishing.

With the exception of the provisions of the present convention, no Nation or group of Nations can, under any pretext, lay claim to rights of sovereignty, of regulation, control, privileges, prerogatives, or restrictions on the high sea.

ARTICLE 16

In case of any violation of the provisions of the preceding article the interested Republic shall be authorized to refer the matter to the Pan American Union, and to bring about an exchange of views.

ARTICLE 17

Exempt from local jurisdiction are :

1. Chiefs of foreign Nations and their respective retinues;
2. Diplomatic agents, in accordance with the special convention relating thereto;
3. Foreign warships and military forces whose entrance has been permitted.

The immunity accorded to military forces does not apply to members in the military service of a country who visit a foreign Nation.

Project No. 13

INTERNATIONAL RIGHTS AND DUTIES OF NATURAL
AND JURIDICAL PERSONS

Whereas: 1. In view of the progress of thought and the development of international relations, natural and juridical persons, as well as international associations, must possess universally recognized rights and be able to invoke these rights in every American Republic;

2. Such rights must emanate from the constitutional provisions of said countries and the demands of public opinion;

For these reasons the American Republics have resolved to sign the following draft convention relative to the international rights of natural and juridical persons.

ARTICLE 1

Every natural or juridical person enjoys upon the territory of each American Republic the following rights especially:

1. Freedom to enter into the territory of any American Republic and to dwell therein, provided the local laws and police regulations are observed, without prejudice to the laws of immigration and the right of expulsion;

2. The inviolability of property; that is, a person may not be deprived of his estate or any other inherited right without a judicial decision legally rendered and except in consideration of a just and previous indemnity;

3. The right to meet and associate together for objects not contrary to the Constitution or laws of the country;

4. Freedom of the press;

5. Freedom of conscience;

6. Freedom of worship;

7. Freedom of commerce, navigation, and industry, provided the laws of each Republic are observed;

8. No foreigner may be judged by courts other than those recognized as competent by the law of the Republic wherein he resides, said courts having been established prior to the commission of the offenses upon which they are to pass judgment; he may not be condemned without legal procedure and except in virtue of a law promulgated prior to the commission of the act of which he is accused, unless the new law is more favorable to him.

ARTICLE 2

The juridical persons recognized by one of the American Republics as of public utility, that is, those recognized by the Government of these Republics as beneficial to the country, by reason of this fact and without any other formality, have a juridical character in all the other American Republics where such recognition of public service exists.

Universities having juridical personality in one of the American Republics possess it likewise in all the others.

Project No. 14

IMMIGRATION

Whereas: 1. Immigration is a factor of vital importance to the Republics of the American Continent, since it contributes to the growth of population;

2. This matter must therefore be regulated;

The American Republics have agreed to conclude the following Convention:

SOLE ARTICLE

Every Republic may determine, taking into consideration its local conditions, what persons or class of persons it shall permit to enter its territory, and to whom it may eventually and at its discretion concede nationality.

Project No. 15

RESPONSIBILITY OF GOVERNMENTS

Whereas it is expedient to determine the responsibility of American Republics with regard to foreigners for damages which they may suffer on the territory of those Republics,

The latter have agreed to conclude the following Convention:

ARTICLE 1

The Government of each American Republic is obliged to maintain on its own territory the internal order and governmental stability indispensable to the fulfillment of international duties.

ARTICLE 2

As a consequence of the rule formulated in the preceding article, the Governments of the American Republics are not responsible for damages suffered by foreigners, in their persons or in their property for any reason whatsoever, except when the said Governments have not maintained order in the interior, have been negligent in the suppression of acts disturbing this order, or, finally, have not taken precautions so far as they were able to prevent the occurrence of such damages or injuries.

DIPLOMATIC PROTECTION

Whereas the cases in which diplomatic claims may be made are matters interesting them in a special manner,

The American Republics have concluded the following Convention:

ARTICLE 1

The American Republics do not recognize in favor of foreigners other obligations or responsibilities than those established for their own nationals in their constitutions, their respective laws, and the treaties in force.

ARTICLE 2

In accordance with the present convention, every American Republic has the right to accord diplomatic protection to its native or naturalized citizens.

The conditions under which an American Republic may grant diplomatic protection depend entirely on its internal legislation.

ARTICLE 3

Every Nation has the right to accord diplomatic protection to its nationals in an American Republic in cases in which they do not have legal recourse to the authorities of the country, or if it can be proved that there has been denial of justice by the said authorities, undue delay, or violation of the principles of international law.

ARTICLE 4

Denial of justice exists—

(a) When the authorities of the country where the complaint is made interpose obstacles not authorized by law in the exercise by the foreigner of the rights which he claims;

(b) When the authorities of the country to which the foreigner has had recourse have disregarded his rights without legal reason, or for reasons contrary to the principles of law;

(c) When the fundamental rules of the procedure in force in the country have been violated and there is no further appeal possible.

ARTICLE 5

Every American Republic has the power to protect not only its own nationals but those of other countries when the latter have en-

trusted it with diplomatic representation or the supervision of their interests in the country where the claim is made.

ARTICLE 6

The American Republic to which the diplomatic claim is presented may decline to receive this claim when the person in whose behalf it is made has interfered in internal or foreign political affairs against the Government to which the claim is made. The Republic may also decline if the claimant has committed acts of hostility toward itself.

ARTICLE 7

A diplomatic claim is not admissible when the individual in whose behalf it is presented is at the same time considered a national by the law of the country to which the claim is made, in virtue of circumstances other than those of mere residence in the territory.

ARTICLE 8

In order that a diplomatic claim may be admissible, the individual in whose behalf it is presented must have been a national of the country making the claim at the time of the occurrence of the act or event giving rise to the claim, and he must be so at the time the claim is presented.

ARTICLE 9

Every American Republic has the right to accord diplomatic protection not only to its nationals but also to the companies, corporations, or other juridical persons who, according to its laws, are of the nationality of the country.

ARTICLE 10

American Republics are expressly forbidden to protect their nationals through diplomatic channels when the rights involved have been acquired by means of a voluntary or forced cession made subsequent to the act giving rise to the claim.

ARTICLE 11

All controversies arising between American Republics regarding the admissibility of a diplomatic claim under the present convention shall be determined by arbitration or by the decision of an international court when not settled by direct negotiation.

Project No. 17

EXTRADITION

The American Republics * * * desiring to confirm their friendly relations and promote the cause of law, have resolved to conclude the following Convention for the extradition of fugitives who may be found within their respective jurisdictions:

ARTICLE 1

Extradition between the American Republics is obligatory.

ARTICLE 2

In order that extradition may be granted it shall be necessary—

(a) That the claimant nation have jurisdiction to prosecute and try the act on which the extradition is based.

(b) That the persons demanded be guilty, as principal or accomplice, of a violation of a penal law punishable in both nations with a penalty not under two years of imprisonment.

(c) That the demanding Nation present documents which, in accordance with its laws, warrant the imprisonment of the person in question (art. 13).

(d) That the violation or penalty be not barred by limitation according to the laws of one or the other Nations.

(e) That the fugitive, if he has already been convicted, shall not yet have served his penalty.

ARTICLE 3

If the offense has been committed outside the territory of the demanding Nation, the extradition shall not be granted unless the law of the Nation of refuge authorizes, under identical conditions, punishment of the same offense when committed outside its territory.

ARTICLE 4

Extradition shall not be permitted—

(a) When the person whose extradition is requested is under prosecution or has already been tried or pardoned in the Nation of refuge for the same offense.

(b) When it is a question of political crimes or others connected therewith (excepting the murder of heads of Nations), or of crimes against religion, or of purely military offenses.

1. It shall be the duty of the requested Nation to decide as to the political nature of an offense, taking into account the law which is most favorable to the fugitive.

2. Acts characterized as anarchy by the laws of both Nations shall not be considered political crimes.

3. The surrender of naval or land deserters shall be optional, but it shall not be permissible for any Nation to enlist the deserters from other Nations in its armed forces, army, navy, or police.

ARTICLE 5

The nationality of the fugitive shall never constitute a hindrance to extradition. A Nation which refuses to deliver up one of its citizens shall be obliged to prosecute and try him on its own territory, in accordance with its own law, and on the basis of such evidence as may be furnished it for this purpose by the demanding Nation.

ARTICLE 6

The surrender of the fugitive shall be delayed as long as he is under penal prosecution for another cause in the Nation of which the extradition is requested, but this fact shall not interfere with the progress of the extradition proceedings.

ARTICLE 7

Any civil obligations contracted by a person whose extradition is requested toward the Nation of refuge shall not interfere with his surrender.

ARTICLE 8

If the act committed by a person demanded is subject to the death penalty, the Nation of refuge may, before granting the extradition, demand that this penalty be commuted to that next below.

ARTICLE 9

When the extradition has been obtained the demanding Nation shall not be allowed to hold the guilty party responsible for any other act than that on which his surrender was based, unless the demanded Nation has previously consented to his being tried for other offenses, or unless it is a case of an offense connected therewith and based on the same evidence as that of the request.

ARTICLE 10

The provision of the foregoing article shall not comprise the case in which the extradited party himself freely and expressly consents to being tried for another act, or, after being set at absolute liberty, remains within the territory of the Nation for a period exceeding one month, nor the case in which it is a question of offenses committed subsequently to the extradition.

ARTICLE 11

The demanding Nation shall not, without the consent of the Nation of refuge, deliver up the extradited party to a third Nation demanding him, except in the cases contemplated in the foregoing article.

ARTICLE 12

If several Nations request the extradition of the same person for the same act, the Nation in whose territory the offense has been committed shall be given preferential attention; if the extradition is requested for different acts, the Nation to be given preference shall be the one in which the gravest offense has been committed, in the opinion of the Nation of refuge; or, if the acts are of equal gravity, the first Nation to request extradition shall be given the preference. When all the requests are presented on the same day, that of prior date shall prevail; if all are of equal date, the Nation requested shall determine the order to be followed. In all the cases contemplated by this article, except the first, the reextradition of the offender may be stipulated so that he may be subsequently delivered up to the other requesting Nations.

ARTICLE 13

The extradition shall be requested through the diplomatic officers, and in the absence of the latter, through the consuls, or directly from Government to Government, the request being accompanied—

(a) By a copy of authentic transcript of the final sentence, together with proof that the criminal was summoned and represented at the trial or declared legally in default; or, if it is not a case of a convicted party, by a writ instituting criminal proceedings, issued by a judge or competent authority and formally decreeing or *ipso facto* effecting the subjection of the accused party to trial and substantiated by an authentic copy of the penal law applicable to the offense on which the request is based.

(b) By all the data and facts necessary in order to establish the identity of the person whose extradition is demanded. The docu-

ments required under (a) shall be issued in the form prescribed by the legislation of the demanding Nation, and shall contain an accurate statement of the acts charged and of the place and date at which it was committed.

ARTICLE 14

In urgent cases the fugitive may, even by virtue of a telegraphic request, be placed under provisional arrest until the demanding Nation presents to the requested Nation, within the period to be fixed by the latter, and which shall not exceed two months, the formal request duly substantiated. All responsibility arising from the provisional detention shall be borne by the Nation requesting the latter.

ARTICLE 15

When the documents accompanying the request are deemed insufficient or irregular, owing to form, the requested Government shall return them in order that the deficiencies may be supplied or the defects corrected, and the party, if under arrest, shall remain under arrest until the period referred to in the foregoing article has expired.

ARTICLE 16

The request for extradition, as regards the formalities connected with it, the decision as to whether it shall be admitted, and the admission and weighing of any defense which may be made against it, shall, as far as is not contrary to the provisions of this Code, be subject to the decision of the competent authorities of the Nation of refuge, in accordance with the legislation of that Nation. The right of the individual demanded to utilize the remedy of habeas corpus or amparo shall be guaranteed in all cases, as shall also the right to demand release on bail, provided the conditions prescribed by the law of the demanding Nation are fulfilled.

ARTICLE 17

Together with the person claimed, or even subsequently, there shall be seized and delivered all articles found in his possession or deposited or hidden in the Nation of refuge and which may have occurred in the perpetration of the punishable act or which may have been obtained by means of this act, as well as those which may serve as convicting evidence.

1. These articles shall be delivered up, even though because of the death or flight of the fugitive the extradition does not take place, provided it has already been granted. If it has not yet been granted, the proceedings shall continue for that purpose.

2. Articles seized and which are in the possession of third parties, or in the hands of the offender but belonging to third parties, shall not be surrendered unless the latter are heard and state whatever objections they may have, and the articles shall be restored to them, if they are entitled thereto, without any expense, upon the termination of the proceedings.

ARTICLE 18

The fugitive shall be taken by agents of the requested Nation to the frontier of the latter, or to the port which is most appropriate for embarkation, and he shall there be delivered to the agents of the requesting Nation.

ARTICLE 19

The transit of the extradited party through the territory of a third Nation shall be permitted upon the mere extradition of the original copy or an authentic transcript of the document granting the extradition, provided the offense is also punishable according to the laws of such third nation.

1. If the extradited party is a citizen of the third Nation, the granting of the passage shall be optional.

2. The transit shall take place under the escort of agents of the third Nation.

ARTICLE 20

The expenses of the extradition shall be borne by each Nation within the limits of its territory. Those of transportation through intervening Nations, or by sea, shall be borne by the requesting Nation.

ARTICLE 21

A Nation which secures the extradition of a person who has not been convicted shall be obliged to communicate the final sentence to the nation granting extradition, as rendered in the trial for which the extradition was requested.

ARTICLE 22

The extradition of persons accused of acts of anarchy may be requested, provided the legislation of both nations punishes such acts. In this case the extradition shall be granted, even if the penalty prescribed is less than two years of imprisonment.

ARTICLE 23

The person demanded may be restored to liberty and shall not be again arrested for the same cause if, after the extradition has been granted, the proper diplomatic or consular officer fails to send him to his destination within 20 days from the date on which he was placed at his disposal.

ARTICLE 24

Existing treaties shall remain in force so far as they are not contrary to the foregoing principles or afford greater facilities for extradition, especially as regards offenses which warrant extradition and as regards the preference in granting it when it is requested by several Nations on the same date.

The Nations may likewise conclude new agreements on extradition, provided they observe these conditions.

Project No. 18¹

FREEDOM OF TRANSIT

The American Republics * * *.

Desirous of making provision to secure and maintain freedom of communications and of transit;

Recognizing that it is well to proclaim the right of free transit and to make regulations to that end as an appropriate means of developing cooperation between Nations without prejudice to their rights of sovereignty or authority over routes available for transit.

ARTICLE 1

Persons, baggage, and goods, and also vessels, coaching and goods stock, and other means of transport, shall be deemed to be in transit across territory under the sovereignty or authority of one of the American Republics, when the passage across such territory, with or without transshipment, warehousing, breaking bulk, or change in the mode of transport is only a portion of a complete journey, beginning and terminating beyond the frontier of the Nation across whose territory the transit takes place.

Traffic of this nature is termed in this Convention "traffic in transit."

ARTICLE 2

Subject to the other provisions of this Convention, the measures of regulation and administration in respect of transport taken by the American Republics across territory under their sovereignty or authority shall facilitate free transit by rail or waterway on routes in use convenient for international transit. No distinction shall be made which is based on the nationality of persons, the flag of vessels, the place of origin, departure, entry, exit, or destination, or on any circumstances relating to the ownership of goods or of vessels, coaching or goods stock or other means of transport.

In order to insure the application of the provisions of this Article, the American Republics will allow transit in accordance with the customary conditions and reserves across their territorial waters.

¹ Adapted from Convention on Freedom of Transit signed at Barcelona, April 21, 1921.

ARTICLE 3

Traffic in transit shall not be subject to any special dues in respect of transit (including entry and exit). Nevertheless, on such traffic in transit there may be levied dues intended solely to defray expenses of supervision and administration entailed by such transit. The rate of any such dues must correspond as nearly as possible with the expenses which they are intended to cover, and the dues must be imposed under the conditions of equality laid down in the preceding Article, except that on certain routes such dues may be reduced or even abolished on account of differences in the cost of supervision.

ARTICLE 4

The American Republics undertake to apply to traffic in transit on routes operated or administered by the Nation or under concession, whatever may be the place of departure or destination of the traffic, tariffs which, having regard to the conditions of the traffic and to considerations of commercial competition between routes, are reasonable as regards both their rates and the method of their application. These tariffs shall be so fixed as to facilitate international traffic as much as possible. No charges, facilities, or restrictions shall depend, directly or indirectly, on the nationality or ownership of the vessel or other means of transport on which any part of the complete journey has been or is to be accomplished.

ARTICLE 5

No American Republic shall be bound by this Convention to afford transit for passengers whose admission into its territories is forbidden, or for goods of a kind of which the importation is prohibited, either on grounds of public health or security or as a precaution against diseases of animals or plants.

Each American Republic shall be entitled to take reasonable precautions to insure that persons, baggage, and goods, particularly goods which are the subject of a monopoly, and also vessels, coaching and goods stock, and other means of transport, are really in transit, as well as to insure that passengers in transit are in a position to complete their journey, and to prevent the safety of the routes and means of communication being endangered.

Nothing in this Convention shall affect the measures which one of the American Republics may feel called upon to take in pursuance of general international conventions to which it is a party, or which may be concluded hereafter, relating to the transit, export, or import of particular kinds of articles, such as opium or other dan-

gerous drugs, arms, or the produce of fisheries, or in pursuance of general conventions intended to prevent any infringement of industrial, literary, or artistic property, or relating to false marks, false indications of origin, or other methods of unfair competition.

Any haulage service established as a monopoly on waterways used for transit must be so organized as not to hinder the transit of vessels.

ARTICLE 6

This Convention does not of itself impose on any of the American Republics a fresh obligation to grant freedom of transit to the nationals and their baggage, or to the flag of a non-contracting Nation, nor to the goods, nor to the coaching and goods stock, or other means of transport coming or entering from, or leaving by, or destined for, a non-contracting Nation, except when a valid reason is shown for such transit by one of the other American Republics concerned. It is understood that for the purpose of this Article, goods in transit under the flag of an American Republic shall, if no transshipment takes place, benefit by the advantages granted to that flag.

ARTICLE 7

The measures of a general or particular character which an American Republic is obliged to take in case of an emergency affecting the safety of the Nation or the vital interests of the country may in exceptional cases, and for as short a period as possible, involve a deviation from the provisions of the above articles; it being understood that the principles of freedom of transit must be observed to the utmost possible extent.

ARTICLE 8

This Convention does not prescribe the rights and duties of belligerents and neutrals in time of war. The Convention shall, however, continue in force in time of war so far as such rights and duties permit.

ARTICLE 9

The coming into force of this Convention will not abrogate treaties, conventions, and agreements on questions of transit concluded by the American Republics before the date of the signature of this Convention.

In consideration of such agreements being kept in force, the American Republics undertake, either on the termination of the agreement or when circumstances permit, to introduce into agreements so kept in force which contravene the provisions of this Con-

vention the modifications required to bring them into harmony with such provisions, so far as the geographical, economic, or technical circumstances of the countries or areas concerned allow.

ARTICLE 10

This Convention does not entail in any way the withdrawal of facilities which are greater than those provided for in the Convention and have been granted, under conditions consistent with its principles, to traffic in transit across territory under the sovereignty or authority of an American Republic. The Convention also entails no prohibitions of such grant of greater facilities in the future.

Project No. 19

NAVIGATION OF INTERNATIONAL RIVERS

The American Republics, desirous of establishing the principles of American international law which shall regulate the navigation of international rivers, in order to secure uniformity in practice and to foster reciprocal commercial relations, have agreed upon the following convention:

ARTICLE 1

An international river is one whose navigable part crosses the territory of two or more nations or is a boundary between them.

ARTICLE 2

International rivers shall be open in time of peace to the merchant vessels of the contracting Republics.

ARTICLE 3

The Republics whose territories are bathed by an international river shall regulate by common accord and in the general interest all questions relative to the navigation of the said river.

ARTICLE 4

The navigable tributaries of international rivers are subject in all respects to the same regulations as the rivers to which they are tributary.

ARTICLE 5

The tolls for navigation collected along international rivers shall be expended exclusively for the maintenance of the navigability of these rivers and for the improvement of their navigation in general.

Project No. 20

AERIAL NAVIGATION¹

The American Republics * * * recognizing the progress of aerial navigation, and that the establishment of regulations of universal application will be in the general interest;

Appreciating the necessity of early agreement upon certain principles and rules calculated to prevent controversy;

Desiring to encourage the peaceful intercourse of Nations by means of aerial communication;

Have determined for these purposes to conclude the following Convention:

Chapter I. General principles

ARTICLE 1

The American Republics recognize that every Nation has complete and exclusive sovereignty over the air space above its territory.

ARTICLE 2

Each American Republic undertakes in time of peace to accord freedom of innocent passage above its territory to the aircraft of the other American Republics, provided that the conditions laid down in the present Convention are observed.

Regulations made by an American Republic as to the admission over its territory of the aircraft of the other American Republics shall be applied without distinction of nationality.

ARTICLE 3

Each American Republic is entitled, for military reasons or in the interest of public safety, to prohibit the aircraft of the other American Republics, under the penalties provided by its legislation and subject to no distinction being made in this respect between its private aircraft and those of the other American Republics, from flying over certain areas of its territory.

In that case the locality and the extent of the prohibited areas shall be published and notified beforehand to the other American Republics.

¹ Adapted from the Convention for the Regulation of Aerial Navigation, signed at Paris, October 13, 1919.

ARTICLE 4

Every aircraft which finds itself above a prohibited area shall, as soon as aware of the fact, give the signal of distress provided in paragraph 17 of Annex (D)¹ and land as soon as possible outside the prohibited area at one of the nearest aerodromes of the Nation unlawfully flown over.

Chapter II. Nationality of aircraft

ARTICLE 5

No American Republic shall, except by a special and temporary authorization, permit the flight above its territory of an aircraft which does not possess the nationality of an American Republic.

ARTICLE 6

Aircraft possess the nationality of the Nation on the register of which they are entered, in accordance with the provisions of section I (c) of Annex (A).¹

ARTICLE 7

No aircraft shall be entered on the register of one of the American Republics unless it belongs wholly to nationals of such Nations.

No incorporated company can be registered as the owner of an aircraft unless it possesses the nationality of the Nation in which the aircraft is registered, unless the President of the Board of Directors of the Company and at least two-thirds of the directors possess such nationality, and unless the company fulfills all other conditions which may be prescribed by the laws of the said Nation.

ARTICLE 8

An aircraft can not be validly registered in more than one Nation.

ARTICLE 9

The American Republics shall exchange every month among themselves and transmit to the Pan American Union copies of registrations and of cancellations of registration which shall have been entered on their official registers during the preceding month.

ARTICLE 10

All aircraft engaged in international navigation shall bear their nationality and registration marks as well as the name and residence of the owner in accordance with Annex (A).

¹ The annexes herein referred to are those of the Paris Convention of Oct. 13, 1919.

Chapter III. Certificates of airworthiness and competency

ARTICLE 11

Every aircraft engaged in international navigation shall, in accordance with the conditions laid down in Annex (B), be provided with a certificate of airworthiness issued or rendered valid by the Nation whose nationality it possesses.

ARTICLE 12

The commanding officer, pilots, engineers, and other members of the operating crew of every aircraft shall, in accordance with the conditions laid down in Annex (E), be provided with certificates of competency and licenses issued or rendered valid by the Nation whose nationality the aircraft possesses.

ARTICLE 13

Certificates of air worthiness and of competency and licenses issued or rendered valid by the Nation whose nationality the aircraft possesses, in accordance with the regulations established by Annex (B) and Annex (E) and hereafter adopted on the recommendation of the Pan American Union, shall be recognized as valid by the other Nations.

Each Nation has the right to refuse to recognize for the purpose of flights within the limits of and above its own territory certificates of competency and licenses granted to one of its nationals by another American Republic.

ARTICLE 14

No wireless apparatus shall be carried without a special license issued by the Nation whose nationality the aircraft possesses. Such apparatus shall not be used except by members of the crew provided with a special license for the purpose.

Every aircraft used in public transport and capable of carrying 10 or more persons shall be equipped with sending and receiving wireless apparatus when the methods of employing such apparatus shall have been determined upon the recommendation of the Pan American Union.

The Pan American Union may later recommend the extension of the obligation of carrying wireless apparatus to all other classes of aircraft in the conditions and according to the methods which it may determine.

Chapter IV. Admission to air navigation above foreign territory

ARTICLE 15

Every aircraft of an American Republic has the right to cross the air space of another Nation without landing. In this case it shall follow the route fixed by the Nation over which the flight takes place. However, for reasons of general security it will be obliged to land if ordered to do so by means of signals provided in Annex (D).

Every aircraft which passes from one Nation into another shall, if the regulations of the latter Nation require it, land in one of the aerodromes fixed by the latter. Notification of these aerodromes shall be given by the American Republics to the Pan American Union and by it transmitted to all the American Republics.

The establishment of international airways shall be subject to the consent of the Nations flown over.

ARTICLE 16

Every American Republic shall have the right to establish reservations and restrictions in favor of its national aircraft in connection with the carriage of persons and goods for hire between two points on its territory.

Such reservations and restrictions shall be immediately published, and shall be communicated to the Pan American Union, which shall notify them to the other American Republics.

ARTICLE 17

The aircraft of an American Republic which establishes reservations and restrictions in accordance with Article 16 may be subjected to the same reservations and restrictions in any other American Republic, even though the latter Nation does not itself impose the reservations and restrictions on other foreign aircraft.

ARTICLE 18

Every aircraft passing through the territory of an American Republic, including landing and stoppages reasonably necessary for the purpose of such transit, shall be exempt from any seizure on the ground of infringement of patent, design, or model, subject to the deposit of security, the amount of which in default of amicable agreement shall be fixed with the least possible delay by the competent authority of the place of seizure.

Chapter V. Rules to be observed on departure, when under way, and on landing

ARTICLE 19

Every aircraft engaged in international navigation shall be provided with:

- (a) A certificate of registration in accordance with Annex (A);
- (b) A certificate of airworthiness in accordance with Annex (B);
- (c) Certificates and licenses of the commanding officer, pilots, and crew in accordance with Annex (E);
- (d) If it carries passengers, a list of their names;
- (e) If it carries freight, bills of lading and manifest;
- (f) Log books in accordance with Annex (C);
- (g) If equipped with wireless, the special license prescribed by Article 14.

ARTICLE 20

The log books shall be kept for two years after the last entry.

ARTICLE 21

Upon the departure or landing of an aircraft, the authorities of the country shall have, in all cases, the right to visit the aircraft and to verify all the documents with which it must be provided.

ARTICLE 22

Aircraft of the American Republics shall be entitled to the same measures of assistance for landing, particularly in case of distress, as national aircraft.

ARTICLE 23

With regard to the salvage of aircraft wrecked at sea, the principles of maritime law will apply in the absence of any agreement to the contrary.

ARTICLE 24

Every aerodrome in an American Republic, which upon payment of charges is open to public use by its national aircraft, shall likewise be open to the aircraft of all the other American Republics.

In every such aerodrome there shall be a single tariff of charges for landing and length of stay applicable alike to national and foreign aircraft.

ARTICLE 25

Each American Republic undertakes to adopt measures to insure that every aircraft flying above the limits of its territory and every aircraft wherever it may be, carrying its nationality mark, shall comply with the regulations contained in Annex (D).

Each of the American Republics undertakes to insure the prosecution and punishment of all persons contravening these regulations.

Chapter VI. Prohibited transport

ARTICLE 26

The carriage by aircraft of explosives and of arms and munitions of war is forbidden in international navigation. No foreign aircraft shall be permitted to carry such articles between any two points in the same American Republic.

ARTICLE 27

Each Nation may, in aerial navigation, prohibit or regulate the carriage or use of photographic apparatus. Any such regulations shall be at once notified to the Pan American Union, which shall communicate this information to the other American Republics.

ARTICLE 28

As a measure of public safety, the carriage of objects other than those mentioned in Articles 26 and 27 may be subjected to restrictions by any American Republic. Any such regulations shall be at once notified to the Pan American Union, which shall communicate this information to the other American Republics.

ARTICLE 29

All restrictions mentioned in Article 28 shall be applied equally to national and foreign aircraft.

Chapter VII. State aircraft

ARTICLE 30

The following shall be deemed to be State aircraft:

(a) **Military aircraft.**

(b) Aircraft exclusively employed in State service, such as posts, customs, and police.

Every other aircraft shall be deemed to be a private aircraft.

All State aircraft other than military, customs, and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present Convention.

ARTICLE 31

Every aircraft commanded by a person in military service detailed for the purpose shall be deemed to be a military aircraft.

ARTICLE 32

No military aircraft of an American Republic shall fly over the territory of another American Republic nor land thereon without special authorization. In case of such authorization the military aircraft shall enjoy, in principle, in the absence of special stipulation, the privileges which are customarily accorded to foreign ships of war.

A military aircraft which is forced to land or which is requested or summoned to land shall by reason thereof acquire no right to the privileges referred to in the above paragraph.

ARTICLE 33

Special arrangements between the Nations concerned will determine in what cases police and customs aircraft may be authorized to cross the frontier. They shall in no case be entitled to the privileges referred to in Article 32.

Chapter VIII. The functions of the Pan American Union

ARTICLE 34

The Pan American Union shall:

(a) Receive proposals from or make proposals to any of the American Republics for the modification or amendment of the provisions of the present Convention and notify changes adopted.

(b) Carry out the duties imposed upon it by the present Convention.

(c) Recommend the amendment of the provisions of the Annexes (A) to (G).

(d) Collect and communicate to the American Republics information of every kind concerning international air navigation.

(e) Collect and communicate to the American Republics all information relating to wireless telegraphy, meteorology, and medical science which may be of interest to air navigation.

(f) Insure the publication of maps for air navigation in accordance with the provisions of Annex (F).

(g) Give its opinion on questions which the Nations may submit for examination.

Any proposed modification of the articles of the present Convention shall be examined by the Pan American Union, whether it originates with one of the American Republics or with the Union itself. No such modification shall be proposed for adoption by the American Republics unless it shall have been approved by at least two-thirds of the members of the Governing Board of the Pan American Union.

All such modifications of the articles of the Convention and Annexes must be formally adopted by the American Republics before they become effective.

Chapter IX. Final provisions

ARTICLE 35

The American Republics undertake, as far as they are respectively concerned, to cooperate as far as possible in international measures concerning:

(a) The collection and dissemination of statistical, current, and special meteorological information in accordance with the provisions of Annex (G).

(b) The publication of standard aeronautical maps and the establishment of a uniform system of ground marks for flying, in accordance with the provisions of Annex (F).

(c) The use of wireless telegraphy in air navigation, the establishment of the necessary wireless stations, and the observance of international wireless regulations.

ARTICLE 36

General provisions relative to customs in connection with international air navigation are the subject of a special agreement contained in Annex (H) to the present Convention.

Nothing in the present Convention shall be construed as preventing the American Republics from concluding, in conformity with its principles, special protocols as between Nation and Nation in respect of customs, police, posts, and other matters of common interest in connection with air navigation. Any such protocols shall be at once notified to the Pan American Union, which shall communicate this information to the other American Republics.

ARTICLE 37

In case of war the provisions of the present Convention shall not affect the freedom of action of the American Republics either as belligerents or as neutrals.

ARTICLE 38

The provisions of the present convention are completed by the Annexes (A) to (II), which, subject to Article 34 (c), shall have the same effect and shall come into force at the same time as the convention itself.

Project No. 21

TREATIES

The American Republics * * * desiring to determine the principles and rules of international law applicable to treaties, have agreed upon the following articles:

ARTICLE 1

All the contracting nations have complete capacity to negotiate treaties and conventions of all kinds soever, according to the form and conditions contained in their respective national laws.

ARTICLE 2

Nations conclude treaties by means of representatives duly appointed by them for a general or special purpose. The credentials of the representatives determine the scope of their powers and are the evidence to the other contracting parties of the existence, nature, and extent of those powers.

The credentials of the representative must be accepted by the other contracting parties. Treaties customarily declare that the credentials of the representatives have been found to be in good and due form.

ARTICLE 3

As a general rule the right of ratification is understood to be reserved.

Treaties must be submitted to the authorities of the respective countries which possess the right to approve and to ratify them.

From the date of the exchange of ratifications the treaty is binding for each of the contracting parties, in the absence of a stipulation to the contrary.

ARTICLE 4

Every amendment, modification, or addition to the text of a treaty is a new proposal binding only upon the express acceptance of the other contracting parties.

The party which ratifies a treaty may make reservations upon ratification, but these do not bind the other contracting parties without their consent.

Refusal to ratify a treaty or an amendment thereto, a modification of the text or a reservation, is a right of the contracting nations and must not be considered as an unfriendly act by the other parties.

ARTICLE 5

Treaties must be executed in good faith and can not be modified except by an amicable agreement of the parties which have signed them.

ARTICLE 6

A treaty is ended by the fulfillment of the obligations for which it was negotiated, by the expiration of the time for which it was made, by the disappearance of any one of the contracting parties, subject to the rights of international succession, or by renunciation on the part of the Nation in whose favor the obligation was created.

Project No. 22

DIPLOMATIC AGENTS

Whereas: 1. The matter of the rights and duties of diplomatic agents is an important one in the life of nations;

2. This matter must be regulated in accordance with the new conditions of political, economic, and international life of the nations;

The American Republics have decided to conclude the following convention:

ARTICLE 1

The American Republics, desiring to maintain close cooperation between them, engage reciprocally to receive their official representatives or diplomatic agents.

Section I. Heads of mission

ARTICLE 2

Diplomatic representatives are classed as ordinary and extraordinary.

Those permanently representing the Government of one of the Republics in its relations with the Government of another are ordinary.

Those intrusted by their Governments with a special mission to another Government, or accredited to represent them in international conferences or congresses, are extraordinary.

ARTICLE 3

The diplomatic agents of the American Republics do not in any case represent the head of the nation. They represent only their Government and must be accredited to the legally recognized Government. In federal Nations the central Government alone can appoint diplomatic agents.

ARTICLE 4

All diplomatic agents possess the same official character and the same prerogatives and immunities. There are no differences between them except those of rank or etiquette.

Rank is conferred by the Government which the agent represents, in accord with the Government to which he is accredited.

Etiquette depends upon diplomatic usages in general and the laws and regulations of the country to which the agent is accredited.

ARTICLE 5

In addition to the functions indicated in their powers, ordinary agents possess the authority conferred upon them by the laws or decrees of their respective countries. They must exercise their authority without coming into conflict with the laws of the country to which they are accredited.

ARTICLE 6

Governments may accredit only one ordinary representative to each of the other Governments, but they may appoint several extraordinary representatives.

ARTICLE 7

In principle the ordinary diplomatic agent may represent only one nation before another Government. However, several nations may agree to be represented by the same agent. An ordinary diplomatic agent may be accredited by the same nation to various Governments.

ARTICLE 8

A diplomatic agent, duly authorized by his Government, may at the request of another, and with the authorization of the local Government, undertake in the country where he is accredited the temporary or incidental protection of the interests of the said Nation which is not represented there by an ordinary agent.

ARTICLE 9

A national of the country in which his functions are to be exercised can not be appointed a diplomatic agent without the consent of his Government.

ARTICLE 10

No nation may appoint an ordinary diplomatic representative to another nation without having previously obtained the approval of the latter.

The nation which lets it be known that the person proposed is not agreeable to it is not obliged to state reasons therefor.

ARTICLE 11

Extraordinary diplomatic agents are accredited in the same manner as ordinary agents and have the same prerogatives and immunities.

Section II. The personnel of legations

ARTICLE 12

Each legation shall have the personnel determined by its Government.

ARTICLE 13

When the diplomatic agent is absent from the place where he exercises his functions, or is unable to fill them, the person designated for the purpose by his Government shall take his place as chargé d'affaires ad interim.

Section III. Special agents

ARTICLE 14

Agents appointed by a Government to carry out, alone or together with others, a special mission within or outside of the country, such as defense of the country before an arbiter, delimitation of boundaries, investigations, mixed commissions, and claims, as well as arbitrators appointed to settle a dispute, shall enjoy in the country where those functions are exercised, and throughout their duration, the same diplomatic immunities and prerogatives as ordinary agents.

ARTICLE 15

The members of permanent international tribunals created by international agreement shall have, in all the American Republics, the immunities and prerogatives enjoyed by the diplomatic agents.

It shall be the same with international functionaries—that is, those appointed by the Pan American Union or by other associations of nations to exercise the functions confided to them.

Those functionaries shall enjoy personal inviolability, even when they exercise their functions in their own country.

Section IV. Duties of diplomatic agents

ARTICLE 16

Foreign diplomatic agents may not interfere in the internal or external political life of the nation where they discharge their functions.

ARTICLE 17

Diplomatic agents, in their official communications, must address themselves directly to the minister of foreign affairs of the country to which they are accredited, and it is through him also that they shall address the other authorities of the country.

ARTICLE 18

Neither the diplomatic agent of a republic nor the minister of foreign affairs of the country to which he is accredited may publish the official correspondence exchanged between them without their reciprocal consent.

Governments may, however, publish the official correspondence with their own diplomatic agents when they consider it advisable.

Section V. Immunities and prerogatives of diplomatic agents

ARTICLE 19

Diplomatic agents shall enjoy inviolability as to their person, their residence, both private and official, and their property.

ARTICLE 20

Nations must accord the diplomatic agents accredited to them every facility for the exercise of their functions. They must especially see to it that the latter are able to communicate freely with their respective Governments.

Moreover, they must protect them by establishing in their laws special sanctions with regard to offenses, injuries, or violence committed against them.

ARTICLE 21

No public judicial or administrative officer of the country to which the agent is accredited may enter the domicile of the latter, or the legation, without the consent of the said agent.

The diplomatic archives are inviolable.

ARTICLE 22

The diplomatic agent is obliged to surrender to the competent local authority any individual pursued for crime or misdemeanor under the law of the country to which he is accredited, who may have taken refuge in the house occupied by the agent or in that of the legation. Should the agent refuse to surrender him, the local authority has the right to guard the house of the agent or of the

legation until the Government of the agent decides upon the attitude which he must take.

ARTICLE 23

The private residence of the agent and that of the legation shall not enjoy the so-called privilege of extritoriality.

However, legal acts executed in the places mentioned by diplomatic agents in the exercise of their functions shall be subject, as to form, to the legislative provisions of the country which they represent.

ARTICLE 24

Diplomatic agents shall be exempt in the country where they are accredited:

1. From all personal taxes, either national or local.
2. From all land taxes on the legation building.
3. From custom duties on objects destined for their personal use or that of their family, up to a sum determined by the Government of the country to which they are accredited.

ARTICLE 25

Diplomatic agents shall be exempt from the civil or criminal jurisdiction of the nation to which they are accredited. They can not be prosecuted in civil or criminal matters except in the courts of their own countries.

ARTICLE 26

When a diplomatic agent has ceased to exercise his functions, for any reason whatsoever, the exemption from local jurisdiction continues with respect to legal actions relating to the exercise of his functions.

ARTICLE 27

A diplomatic agent shall not be exempt from local jurisdiction even during the exercise of his functions:

1. For real actions, including possessory actions, relative to immovable property situated in the territory where the agent is accredited, and which is neither the house he occupies nor that of the legation.
2. For actions connected with his capacity as heir or legatee of an estate settled on the territory of the country to which the diplomatic agent is accredited.
3. For actions resulting from contracts executed by the diplomatic agent which do not refer to the seat or furnishings of the legation, if

it has been expressly stipulated that the obligation must be fulfilled in the country where the agent is accredited.

4. In case of waiver of diplomatic immunity, which, however, can not occur without the consent of the Government which the agent represents.

ARTICLE 28

The diplomatic agent may refuse to appear as a witness before the courts of the country to which he is accredited.

In case the evidence should be necessary, it must be requested in writing and through the diplomatic channel.

ARTICLE 29

The inviolability of the diplomatic agent and his exemption from local jurisdiction shall begin from the moment he crosses the frontier of the nation where he must exercise his functions; they shall terminate the moment he leaves the said territory.

The diplomatic agent who, in going to take possession of his post or in returning therefrom, crosses the territory of an American Republic or is accidentally there during the exercise of his functions shall enjoy in that territory the personal immunity and immunity from jurisdiction referred to in the preceding articles.

ARTICLE 30

The inviolability of diplomatic agents, the exemption from taxes and jurisdiction, as well as the other immunities which they enjoy and to which the preceding articles relate, also extend to all those who form part of the official personnel of the diplomatic mission, and to the members of their families who live with them. The exemption from local jurisdiction extends likewise to their servants; but if the latter belong to the country where the mission resides, they shall not enjoy such privilege except when they are in the legation building.

ARTICLE 31

In case of death of the diplomatic agent his family shall retain diplomatic inviolability and immunity for a reasonable period, which shall be fixed by the Government to which the agent is accredited.

Section VI. Termination of the diplomatic mission

ARTICLE 32

The mission of the diplomatic agent shall terminate—

1. At the expiration of the period fixed for the accomplishment of the mission.
2. By the conclusion or solution of the matter if the mission may have been created for a particular question.
3. By official notification given by the Government of the agent to the Government to which he is accredited of the termination of his functions.
4. By the delivery of passports to the agent by the Government to which he is accredited.
5. By the request for his passports addressed by the agent to the Government to which he is accredited.
6. By declaration of war between the Nation to which the agent belongs and that to which he is accredited.

In these last three cases a reasonable period shall be allowed the agent and his family in which to quit the territory of the country.

It shall be, moreover, a duty of the Government to which the agent is accredited to see that during that time he and his family, as well as the official personnel of the legation, are not disturbed or harmed as to their persons or property.

The death or resignation of the Head of the Nation to which the agent belongs, or to which he is accredited, or a change of government or of political régime of said countries, shall not in itself terminate the mission of the diplomatic agent.

Project No. 23

CONSULS

The American Republics * * * considering it well, in conformity with the requirements of economic life, to regulate the questions relating to consular agents, have decided to conclude the following convention:

ARTICLE 1

The American Republics agree to receive consular officers in any part of their respective territories except in those localities where they do not consider it advantageous to do so.

ARTICLE 2

The consular agents should, before entering upon the performance of their duties, obtain the exequatur from the Government of the Republic to which they have been assigned unless the Government in question has, at the request of the respective legation, granted a provisional recognition.

ARTICLE 3

The different classes of consular agents, their rank and duties, are determined by the Republic which appoints them, so far as this is not incompatible with the laws of the country where the consular officer exercises his functions.

As to ceremonial, they shall be subject to the provisions of the law of the country of their residence.

ARTICLE 4

Consular agents shall exercise their functions in accordance with the laws of the country to which they are accredited. The powers of consuls and the exercise of their functions shall be regulated by the respective countries according to custom or by special conventions.

ARTICLE 5

In the exercise of their functions, consular agents shall address themselves officially to the local administrative authorities. If the said authorities do not heed their requests, the consular agents shall

bring the fact to the knowledge of the diplomatic agent of their own country or, in his absence, to the competent authority of their country, in order that such diplomatic action may be taken as shall be deemed suitable.

ARTICLE 6

Consular agents shall be subject to the local authorities in all matters which do not fall within the exercise of their functions and within the limits of their competence.

Persons who may have suffered injuries by acts of a consular agent in his character as such must present their complaints to the government of the republic in which the consul resides. This government, if it considers it advisable, will make the proper diplomatic representation.

ARTICLE 7

When in a civil case a court of one of the American Republics shall desire to receive a judicial declaration or deposition of a consular agent who is a citizen of the nation which appointed him, and who is engaged in no commercial business, it shall request him in writing to appear before it, and in case of his inability to do so it shall request him to give his testimony in writing, or shall visit his residence or office to obtain it orally, and it shall be the duty of said agent to comply with this request with as little delay as possible; but in all criminal cases in which the right is secured to persons charged with crimes to obtain witnesses in their favor, the appearance in court of said consular officer shall be required, with all possible regard to the consular dignity and to the duties of his office, and it shall be the duty of such officer to comply with said requirement.

ARTICLE 8

The consular offices are inviolable, and in no case can the local authorities enter without permission of the chief of the office, or examine or seize the papers there deposited. Nor shall consular agents be required to produce the official archives in court or to testify as to their contents except in matters of private interest.

If a fugitive from justice takes refuge in a consulate, the consul is bound to hand him over on the simple demand of the authorities.

When a consular agent is engaged in other business, the papers relating to the consulate shall be kept separate.

ARTICLE 9

In case of death, incapacity, or absence of consular agents, their chancellors or secretaries, whose official character may have pre-

viously been made known to the foreign office, may temporarily exercise their functions, and while thus acting shall enjoy all the rights, prerogatives, and immunities granted to the incumbent.

ARTICLE 10

Consular agents may place over the outer door of their offices the shield of their Nation.

ARTICLE 11

The functions of consular agents shall cease:

1. By virtue of an official communication of the government which has appointed him that his functions are terminated;
2. By the withdrawal of the exequatur given by the government of the country where the consul resides.

Project No. 24

EXCHANGE OF PUBLICATIONS

Whereas, in order to strengthen the bonds of friendship and co-operation uniting them, it would be very useful to assure a regular reciprocal exchange of all publications appearing in their territories, especially those of an official character,

The American Republics have agreed to conclude the following convention:

ARTICLE 1

The Governments of the American Republics bind themselves to furnish one another, as well as the Pan American Union, two copies of each of the following official publications:

(a) Parliamentary, administrative, and statistical documents which may be published by each one of them.

(b) Works of all kinds published or subsidized by them.

(c) Geographic maps, general as well as special; topographic maps, and every other kind of work of that nature.

ARTICLE 2

Each Government shall make as complete a collection as possible of the works published by it, especially publications relating to its history, statistics, and geography, and shall send it to the other Governments of America and to the Pan American Union, in conformity with the preceding article.

ARTICLE 3

As each receives the works sent by the others it shall announce the fact so that they may be consulted in its office or library.

ARTICLE 4

So far as the Universal Postal Union Convention permits, the American Republics shall declare the above-mentioned exchange of publications to be postage free, as well as the official correspondence relating thereto.

Project No. 25

INTERCHANGE OF PROFESSORS AND STUDENTS

Whereas it is very useful, in order to strengthen the ties of cooperation and solidarity which unite all the Republics of the New World, to have interchanges of professors and students between universities or colleges,

The said Republics have decided to regulate these subjects by means of the following convention:

ARTICLE 1

The universities, preparatory schools, and colleges existing in the different American Republics, whether of official character or private initiative, may establish between them interchanges of professors and students on the following bases:

(a) The institutions mentioned shall grant all necessary facilities in order that the professors whom they receive from one another may hold classes or lectures.

(b) These classes or lectures shall treat chiefly of scientific matters which are of interest to America, or which relate to special conditions of one or more countries of America, particularly that to which the professor belongs.

(c) Every year the institutions mentioned shall communicate to those with whom they desire to make an interchange of professors the subjects to be treated of in their classes by foreign professors.

(d) The remuneration of the professor shall be paid by the institution which has appointed him, unless his services shall have been expressly requested by the one which invited him; in such case his remuneration shall be borne by the latter.

(e) The institutions shall determine annually the amount intended to cover the expenses of the interchange of professors, either from their own budget or by requesting it from their government.

ARTICLE 2

The universities, preparatory schools, or colleges, both official and unofficial, of the American Republics shall endeavor to create in their establishments scholarships in favor of students of other re-

publics of the continent, with or without reciprocity, adopting, directly or through their governments, the necessary measures for the distribution of those scholarships.

The institutions which create said scholarships shall appoint a committee charged to supervise the scholarship students, to direct them in their studies and to decide on the measures necessary to the due performance of their obligations.

ARTICLE 3

The universities of America, both private and official, shall endeavor to meet periodically in congresses, in order to establish better means of American intellectual cooperation.

MARITIME NEUTRALITY

Whereas: 1. It is essential to the maintenance of peace to regulate the matter of neutrality, especially maritime neutrality;

2. All nations are equally interested in having their rights in regard thereto respected, and consequently it is possible to reach an agreement for the protection of those rights;

3. It is necessary to safeguard especially commercial freedom and to relieve neutrals of the useless burden and responsibilities under which they labor to-day in the observance of maritime neutrality;

4. The solidarity uniting all the members of the community of nations requires this new conception of neutrality;

For these reasons, the American Republics have signed the following convention on maritime neutrality:

Section I. General declaration

ARTICLE 1

In case of war between two or more countries, the American Republics consider it a duty to remain neutral and to contribute to ending the dispute by the offer of good offices or mediation.

The exercise of that right can never be considered by the parties as an unfriendly act.

Section II. Powers of the Pan American Union

ARTICLE 2

In order to insure respect for the rights of neutrals, and particularly the freedom of commerce and navigation which exists in time of peace, the governing board of the Pan American Union, immediately upon the declaration of war, shall meet to examine the common interests of the American Republics.

Section III. On freedom of commerce in time of war

ARTICLE 3

The American Republics declare that the following rules are to be deemed a part of international law:

1. A merchant ship must be ordered to submit to visit and search to determine its character before it can be seized.

A merchant ship must not be attacked unless it refuse to submit to visit and search after warning, or fail to proceed as directed after seizure.

A merchant ship must not be rendered unseaworthy until the crew and passengers have been first placed in safety.

2. Belligerent submarines are not under any circumstances exempt from the rules above stated. If a submarine can not capture a merchant vessel in conformity with these rules existing international law requires it to desist from attack and from seizure and to permit the latter to continue on its way.

Section IV. Rights and duties of belligerents

ARTICLE 4

Belligerents are bound to respect the sovereign rights of neutral American Republics and to abstain, in their territory or jurisdictional waters, from any act which would constitute a violation of neutrality on the part of the nation permitting it.

ARTICLE 5

Belligerents are especially forbidden to use ports and waters of neutral American Republics as a base of naval operations against their adversaries, and in particular to erect wireless telegraph stations or any apparatus for the purpose of communicating with the belligerent forces on land or sea.

ARTICLE 6

A distinction must be made between warships and merchant ships with regard to the sojourn, revictualing, and provisioning of belligerent ships in the ports, roadsteads, and jurisdictional waters of neutral American Republics.

The following provisions relative to warships apply equally:

- (1) To ordinary auxiliary ships;
- (2) To merchant ships converted into warships in accordance with 1907 Hague Convention VII;
- (3) To belligerent merchant ships which lend regular or occasional assistance to the warships of their country without having been converted into auxiliary ships conformably to the said convention;
- (4) To neutral ships which render regular or occasional assistance to belligerent ships.

And the following provisions relative to merchant ships apply equally to ships which have been reconverted from auxiliary ships to merchant ships in accordance with Article 11 of the present convention.

ARTICLE 7

Belligerent warships may not make repairs in the ports, roadsteads, and territorial waters of neutral American Republics except in case of duly justified force majeure.

They shall only carry out such repairs as are absolutely necessary to render them seaworthy. The neutral authority shall decide what repairs are necessary, and these must be carried out as rapidly as possible. The ships must leave the port as soon as the circumstances of force majeure are at an end.

Those war ships are especially forbidden to replenish and increase their supplies of war material and their armament, or to complete their crews.

ARTICLE 8

Belligerent merchant ships may take on coal and acquire necessary supplies in the ports of neutral American Republics under conditions specially decreed by the local authority, or, in the absence of these, in the same manner as in time of peace.

ARTICLE 9

If it is established that a merchant ship, after having taken on coal or acquired necessary supplies in a port of a neutral American Republic, has transferred all or a part of its supplies to a belligerent warship within the territorial waters of the country or outside of them, it shall not return to said country for provisions or fuel.

ARTICLE 10

If, by the manner in which it is fitted out or by reason of other circumstances, a merchant ship is suspected of being able to furnish warships of its country with needed supplies, the neutral local authority may, according to the circumstances, consider it as an auxiliary ship, and therefore refuse it all provisions, or require, from the agent of the company owning the ship, a guaranty that the said ship will not aid or assist any belligerent ship.

When a ship has become an object of suspicion its case must immediately be communicated to the Pan American Union in order that it may determine what should be done. This applies especially to a ship which has secretly left a port of an American Republic.

ARTICLE 11

Auxiliary ships of belligerents reconverted into merchant ships shall be admitted as such in the ports of neutral American Republics on condition:

(1) Of not having violated the neutrality of the American Republic where they arrive.

(2) That the conversion may have been accomplished in the ports or jurisdictional waters of the country to which the ship belongs or in the ports of its allies.

(3) That the conversion be effective; that is, that the ship may not reveal, either by its crew or by its installations, that it can render the services of auxiliary to its country's war fleet which it previously rendered.

(4) That the Government of the country to which the ship belongs communicate to the American Republics the names of the auxiliary ships which have lost this character to resume that of merchant ships.

(5) That the same Government give assurance that the said ships will not in the future be used as auxiliaries to the war fleet.

ARTICLE 12

The aircraft (airplanes, dirigibles) of belligerent countries may fly over the territory or jurisdictional sea of neutral American Republics only in accordance with the regulations established by the latter on this subject.

Section V. Rights and duties of neutrals

ARTICLE 13

In war a distinction must be drawn between acts of assistance on the part of neutral nations and commercial acts on the part of the individual; the first only are contrary to neutrality.

The supply for any reason, made directly or indirectly by a neutral power to a belligerent power, of warships, ammunition, or war material of any kind whatever, is forbidden.

ARTICLE 14

The Governments of the American Republics are especially forbidden to consent to loans or to open credits to any one of the belligerents during the period of the conflict.

ARTICLE 15

If one of the American Republics which has been informed of the commencement of hostilities knows that a belligerent warship is in one of its ports or roadsteads or in its territorial waters, it must notify the said ship to depart within 24 hours or within the time prescribed by the local law.

ARTICLE 16

A prize may only be brought into a port of a neutral American Republic on account of unseaworthiness, stress of weather, or want of fuel or provisions.

It must leave as soon as the circumstances which justified its entry are at an end. If it does not, the neutral American Republic shall notify it to leave at once. Should it fail to obey, the neutral Republic must employ the means at its disposal to release the prize with its officers and crew and intern the prize crew.

ARTICLE 17

The neutral Republic must, similarly, release the prize which may have been brought into one of its ports under circumstances other than those referred to in Article 16.

ARTICLE 18

The Governments of neutral American Republics are bound to employ the means at their disposal to prevent the fitting out or arming of any vessel within their jurisdiction which they have reason to believe is intended to engage in hostile operations against a power with which they are at peace. They are also bound to display the same vigilance to prevent the departure from their jurisdiction of any vessel intended to engage in hostile operations and which may have been wholly or partially adapted for use in war within the said jurisdiction.

ARTICLE 19

No neutral American Republic is bound to prevent the export or transit, for the use of either belligerent, of arms, ammunition, or, in general, of anything which may be of use to an army or fleet.

ARTICLE 20

A Government of a neutral American Republic must prevent the agents of belligerent Governments from enlisting their nationals on its territory, and especially from calling the latter under threat of accusing them of desertion.

But the neutral Government must not oppose the voluntary departure of the nationals of belligerent nations, even if they leave simultaneously and in great numbers. The neutral Government may, however, oppose the voluntary departure of its own nationals who wish to enroll in the army of one of the belligerents.

ARTICLE 21

The use in time of war of the telegraphs or cables of neutral American Republics by the nationals of belligerent countries shall be subject to the measures decreed by the local authority.

ARTICLE 22

A neutral American Republic is bound to exercise such surveillance as the means at its disposal allow to prevent any violation of its neutrality in its ports, roadsteads, or in its jurisdictional waters.

ARTICLE 23

Belligerent warships or merchant ships which enter the ports, roadsteads, or jurisdictional waters of a neutral American Republic without being entitled to enter, conformably to the provisions of this convention, may be interned by order of the Government.

A ship shall be considered to be interned from the moment it has received the order of internment from the neutral local authority, even though a request for reconsideration may have been made by the infringing ship.

ARTICLE 24

Every ship interned for violation of neutrality, as well as its crew, shall be interned in the place and under the conditions which best suit the Republic which orders the internment, and the latter shall be made at the expense of the infringing ship.

Except in case of gross mistake on its part, the American Republic which interns a ship is not responsible for damages suffered by the latter.

ARTICLE 25

When a ship transporting merchandise has to be interned in a port of a neutral Republic, the merchandise destined for the said Republic shall be unloaded and that destined for other ports transhipped.

ARTICLE 26

In case, as a consequence of naval operations which have taken place outside of the jurisdictional waters of an American Republic, there should be dead or wounded on one of the belligerent ships, temporary hospital ships may be sent to the scene of trouble under the control and surveillance of the neutral government. Those ships shall enjoy complete inviolability during the time their mission lasts.

The wounded or shipwrecked shall not be interned. They shall be put at liberty as soon as possible.

Section VI. On the execution and sanction of the laws of neutrality and of belligerency

ARTICLE 27

The belligerent party which violates the provisions of the present convention shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

ARTICLE 28

In case of war the authorities of the neutral American Republics are especially charged—

(1) To see that the rights and duties of neutrality are observed on the territory of the republic.

(2) To see to the observance of the provisions, if any, which the Pan American Union has recommended regarding the dispute and which the republics have accepted.

(3) To settle provisionally the urgent controversies which may arise between the belligerents and the authorities of the country in which the authorities reside.

ARTICLE 29

The Pan American Union may, in agreement with the governments of the interested American Republics, appoint commissions to observe how the belligerents conform to the laws and customs of war.

The reports of those commissions will permit of proving whether there has been a violation of the laws and usages of war. In such case the Pan American Union may, if it deem it advisable, protest in the name of the Republics of the New World against the violation committed.

VOEUX

The American Republics express the following voeux:

1. Belligerent warships shall not have access to the ports, roadsteads, and territorial waters of neutral American Republics except in case of duly proven force majeure.

The need of replenishing in fuel or supplies does not constitute a case of force majeure which authorizes a warship to enter the ports, roadsteads, or jurisdictional waters of neutral American Republics.

2. That it be formally forbidden to maintain a commercial blockade, in any manner whatsoever, of the ports of belligerents and the maritime zones bathing their coasts.

3. The inviolability of private property at sea: Merchant ships of belligerents as well as of neutrals must in no case be subject to confiscation, and still less be sunk for any reason or pretext whatsoever.

If the said ships carry contraband of war, the latter can be either confiscated or destroyed by the captor.

4. That the right of search be abolished and that it be established that the local authorities of each American Republic shall visé the papers of the merchant ships which depart from the said Republic destined for a belligerent port.

Belligerent ships can not stop the merchant ships of neutral American Republics or those belonging to the other belligerent, except to demand the production of the ship's papers thus viséed.

Belligerent ships may, in spite of the regularity of the said papers, proceed to the search of the merchant ships. If it results from the search that the ship does not carry contraband of war, the searching ship may be condemned to pay compensation for the injury caused. If the ship searched carries contraband, the American Republic whose authorities have viséed the false passport must pay compensation.

If the ships are not furnished with papers duly viséed, they may be searched according to existing international practice without occasioning indemnity.

Project No. 27

PACIFIC SETTLEMENT¹

The American Republics in order to conserve the peace upon which their civilization depends, and to avert war, which menaces it, agree to have recourse for the settlement of all disputes between them, when direct negotiations have failed, to the measures regulated in the present convention.

Part I. The maintenance of general peace

ARTICLE 1

General peace should be maintained by means of good offices, mediation, commissions of inquiry and conciliation, friendly composition, arbitration, and the judicial power.

Part II. Good offices and mediation

ARTICLE 2

In case of serious disagreement the American Republics shall have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly nations.

ARTICLE 3

Independently of this recourse the American Republics deem it expedient and desirable that one or more nations, strangers to the question, should, on their own initiative and as far as circumstances may allow, offer their good offices or mediation to the nations at variance.

The exercise of this right can never be regarded by any of the parties as an unfriendly act.

ARTICLE 4

The part of the mediator consists in reconciling the opposing claims and removing the causes of complaint which may exist between the nations at variance.

¹ From The Hague Convention for the Pacific Settlement of International Disputes.

ARTICLE 5

The functions of the mediator terminate when it is declared by one of the parties or by the mediator that the means of conciliation proposed by him are not accepted.

ARTICLE 6

Good offices and mediation undertaken either at the request of the parties or on the initiative of foreign nations have exclusively the character of advice and never have binding force.

*Part III. Commissions of inquiry*¹

ARTICLE 7

All controversies which for any cause whatsoever may arise between two or more of the American Republics and which it has been impossible to settle through diplomatic channels, or to submit to arbitration in accordance with existing treaties, shall be submitted for investigation and report to a commission to be established in the manner provided for in Article 10. In case of dispute none of the parties shall begin mobilization or concentration of troops on the frontier of the other, nor engage in any hostile act or preparations for hostilities from the time steps are taken to convene the commission until the said commission has rendered its report, or until the expiration of the time provided for in Article 18.

ARTICLE 8

The controversies referred to in Article 7 shall be submitted to the commission of inquiry, provided it has been impossible to settle them through diplomatic negotiations or procedure or by arbitration, or in cases in which the circumstances of the fact render all negotiations impossible and there is imminent danger of an armed conflict between the parties. Any one of the governments directly interested in the investigation of the facts giving rise to the controversy may apply for the convocation of the commission of inquiry, and to this end it shall be necessary only to communicate officially this decision to the other party and to one of the permanent commissions established by Article 9.

ARTICLE 9

Two commissions to be designated as permanent shall be established with their seats at Washington (United States of America) and at Montevideo (Uruguay). They shall be composed of the three

¹ Adapted from the Convention adopted by the Fifth American Conference of 1923.

American diplomatic agents longest accredited in said capitals, and at the call of the foreign offices of these States they shall organize, appointing their respective chairmen. Their functions shall be limited to receiving from the interested parties the request for a convocation of the commission of inquiry and to notifying the other party thereof immediately. The government requesting the convocation shall appoint at the same time the persons who are to compose the commission of inquiry in representation of that government, and the other party shall likewise, as soon as it receives notification, appoint its members.

Once the request for convocation has been received and the permanent commission has made the respective notifications, the question or controversy existing between the parties and as to which no agreement has been reached shall ipso facto be suspended.

ARTICLE 10

The commission of inquiry shall be composed of five members, all nationals of American states, appointed in the following manner: Each government shall appoint two at the time of convocation, only one of whom shall be a national of its country. The fifth shall be chosen by common accord by those already appointed and shall perform the duties of president. However, a citizen of a nation already represented on the commission may not be elected. Any of the governments may refuse to accept the elected member, for reasons which it may reserve to itself, and in such event a substitute shall be appointed, with the mutual consent of the parties, within 30 days following the notification of this refusal. In the failure of such agreement, the designation shall be made by the president of one of the American Republics not interested in the dispute, who shall be selected by lot by the commissioners already appointed from a list of not more than six American presidents, to be formed as follows: Each government party to the controversy, or if there are more than two governments directly interested in the dispute, the government or governments on each side of the controversy shall designate three presidents of American States which maintain the same friendly relations with all the parties.

Whenever there are more than two governments directly interested in a controversy, and the interests of two or more of them are identical, the government or governments on each side of the controversy shall have the right to increase the number of their commissioners, as far as it may be necessary, so that both sides in the dispute may always have equal representation on the commission.

Once the commission has been thus organized in the capital city

* * * it shall notify the respective governments of the date of

its inauguration and it may then determine upon the place or places in which it will function, taking into account the greater facilities for investigation.

The commission of inquiry shall itself establish its rules of procedure.

Its decisions and final report shall be agreed to by the majority of its members.

Each party shall bear its own expenses and a proportionate share of the general expenses of the commission.

ARTICLE 11

The signatory governments grant to all the commissions which may be constituted the power to summon witnesses, to administer oaths, and to receive evidence and testimony.

ARTICLE 12

During the investigation the parties shall be heard and may have the right to be represented by one or more agents and counsel.

ARTICLE 13

All members of the commission shall take oath duly and faithfully to discharge their duties before the highest judicial authority of the place where it may meet.

ARTICLE 14

The inquiry shall be conducted so that both parties shall be heard. Consequently, the commission shall notify each party of the statements of facts submitted by the other, and shall fix periods of time in which to receive evidence.

Once the parties are notified, the commission shall proceed to the investigation, even though they fail to appear.

ARTICLE 15

As soon as the commission of inquiry is organized it shall, at the request of any of the parties to the dispute, have the right to fix the status in which the parties must remain, in order that the situation may not be aggravated and matters may remain in statu quo pending the rendering of the report by the commission.

ARTICLE 16

The parties to the controversy shall furnish the antecedents and data necessary for the investigation. The commission shall render its report within one year from the date of its inauguration. If it

has been impossible to finish the investigation or draft the report within the period agreed upon it may be extended six months beyond the period established, provided the parties to the controversy are in agreement upon this point.

ARTICLE 17.

The finding of the commission will be considered as reports upon the disputes which were the subject of the investigation, but will not have the value or force of judicial decisions or arbitral awards.

ARTICLE 18

Once the report is in possession of the governments parties to the dispute and the Pan American Union, six months' time will be available for renewed negotiations in order to bring about a settlement of the difficulties, in view of the findings of said report; if during this new term they should be unable to reach a friendly arrangement, the parties in dispute shall recover entire liberty of action to proceed as their interests may dictate in the question dealt with in the investigation.

Part IV. Conciliation

ARTICLE 19

In case of a serious question endangering the peace of any of the American Republics, resort may be had by one of the parties to the governing board of the Pan American Union, which shall thereupon exercise the functions of a council of conciliation.

The request shall be directed to the Director General of the Union, who shall lay the request without delay before the chairman of the governing board. The latter shall immediately call a meeting of the board to consider what recommendation must be adopted. The interested Republics shall refrain from all direct intercourse until the governing board may have decided the nature and form of its recommendation.

Part V. Friendly composition

ARTICLE 20

Any question which has not been resolved by any of the methods stipulated in the present convention shall, at the request of all the parties, be submitted to the chief executive of any one of the American Republics or to any person possessing the confidence of said

parties. The chief executive or person so selected shall assume the functions of "friendly compositor" and render an award.

A special agreement of the parties shall state the terms of the question and the procedure to be followed by them and by the friendly compositor.

Part VI. Arbitration

ARTICLE 21

International arbitration has for its object the settlement of questions between States by judges of their own choice and on the basis of respect for law.

ARTICLE 22

The arbitration convention may be concluded for questions already existing or for those which may arise.

It may embrace any question or only those of a certain class.

ARTICLE 23

The arbitration convention implies the duty to submit loyally to the award.

ARTICLE 24

With the object of facilitating an immediate recourse to arbitration for international differences, which it has not been possible to settle by other methods, the following rules of procedure shall be observed in the absence of a stipulation to the contrary by the parties.

ARTICLE 25

The permanent court of arbitration organized in accordance with the provisions of the pacific settlement convention of The Hague, of 1907, shall be competent for all arbitrations. If the dispute is submitted to the permanent court of The Hague, the tribunal shall be formed and the procedure followed in accordance with the pacific settlement convention of 1907.

ARTICLE 26

In differences which the parties desire to have decided by a court of justice, resort may be had to the permanent court of international justice established at The Hague, or to any other court of justice which may be constituted for this purpose by the American Republics.

When the resort is to the permanent court of international justice at The Hague, the procedure shall be in accordance with the statute of the said court.

Project No. 28

PAN AMERICAN COURT OF JUSTICE¹

Whereas the Fifth Pan American Conference, which met at Santiago de Chile, resolved "to forward to the commission of jurists which is to meet at Rio de Janeiro in 1925 for the codification of international law, the proposal presented by the delegation of Costa Rica,² regarding the creation of a permanent court of American justice, as well as all other proposals that the various American Governments may formulate in this respect"; and

Whereas the collaboration of the American Institute of International Law in the preparatory labors of said commission of jurists was requested by virtue of a resolution of the governing board of the Pan American Union which was communicated to the institute by the Secretary of State of the United States of America in his capacity as chairman of the governing board under date of January 2, 1924;

The executive council of the American Institute of International Law, without expressing the opinion of its members on the creation of a new court of international justice, presents to the consideration of the Commission of Jurists the following project:

ARTICLE 1

The Pan American Court of International Justice shall be composed of a member from each one of the contracting Parties and appointed by it.

The members shall be chosen from persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial offices or who are jurisconsults of recognized competence in international law.

ARTICLE 2

At a date to be fixed by the Governing Board of the Pan American Union each contracting Republic shall be requested to appoint a member, and the names of the persons so appointed shall be transmitted to the Director General of the Pan American Union. The members thus appointed shall form the court, and the Director General shall send a list of them to each Republic.

¹Adapted from the project of the Commission of Jurists of The Hague.

²For the text of this proposal see the Appendix.

The Pan American Union shall request from each contracting Republic the name of a Canadian jurisconsult who possesses the qualifications specified in Article 1 and who is disposed to accept the position of member of the court. The names of the persons proposed shall be drawn by lot by the Director General of the Union at a meeting of the governing board, the person whose name is thus drawn from the urn being appointed to the court.

ARTICLE 3

At a meeting of the governing board the names of the members shall be placed in an urn and the Director General shall draw them one by one. The first half shall form the Court of First Instance; the second, the court of appeal.

In respect to the United States and Canada, the person whose name is first drawn shall be in the first branch, and the person whose name is last drawn shall be reserved for the court of appeal.

ARTICLE 4

In case of a vacancy in either division, the new member shall be chosen in accordance with the provisions of Article 2 to serve for the balance of the term of his predecessor.

ARTICLE 5

The members of the court are appointed for a period of — years, and shall serve until their successors are appointed. They may be reelected.

ARTICLE 6

The exercise of any function which belongs to the political direction, national or international, of the American Republics by a member of the court during his term of office is declared incompatible with his judicial duties.

Any doubt on this point shall be settled by the decision of the Court to which the party in interest does not belong.

ARTICLE 7

No member of the Court may act as agent, counsel, or advocate in any case of an international nature.

No member shall participate in the decision of any case in which he has previously taken an active part as agent, counsel, or advocate for one of the contesting parties, or as a member of a national or international court, or of a commission of inquiry, or in any other capacity.

Any doubt on this point shall be settled by the decision of the court.

ARTICLE 8

The members of the court, when engaged on the business of the court, shall enjoy diplomatic privileges and immunities.

ARTICLE 9

Every member of the court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and justly.

ARTICLE 10

The court shall elect its president and vice president, to serve for a period of one year; they may be reelected.

The court shall elect its secretary general.

ARTICLE 11

The court shall be established in the city of Habana.

ARTICLE 12

The sessions shall begin on —, and shall continue for so long as may be deemed necessary to finish the cases pending.

The president shall summon an extraordinary session of the court whenever necessary.

ARTICLE 13

If for some special reason a member of the court considers that he should not take part in the decision of a case, he shall so inform the president.

If the president considers that for some special reason one of the members of the court should not sit on a case, the latter shall be so notified.

If in any such case the member of the court and the president disagree, the matter shall be decided by the court.

ARTICLE 14

Each branch of the court shall sit in banc except when it is expressly provided otherwise.

If, however, — judges are not available, a quorum of — judges shall suffice to constitute the court.

ARTICLE 15

The members of the court shall receive compensation during the time of their attendance upon the court, to be fixed by the governing board of the Pan American Union. Such compensation shall include traveling expenses to and from the court and a per diem, likewise to be fixed by the governing board, during their official attendance upon the court.

The salary of the secretary general shall be fixed by the governing board.

ARTICLE 16

The expenses of the court shall be borne by the contracting Republics, according to the proportion contributed by —.

ARTICLE 17

The court shall have obligatory jurisdiction in the following cases:

- (a) The interpretation of a treaty.
- (b) The existence of any fact which, if established, would constitute a breach of an international obligation.
- (c) The nature and extent of reparation to be made for the breach of an international obligation.
- (d) The interpretation of a sentence passed by the court.

The court shall also take cognizance of all disputes of any kind which may be submitted to it by a general convention between the parties.

In the event of a controversy as to whether a certain case comes within any of the categories above mentioned, the matter shall be decided by the court.

ARTICLE 18

The court shall, within the limits of its jurisdiction, apply in the order following:

1. International conventions, whether general or special, establishing rules expressly recognized by the parties in dispute.
2. International custom, as evidenced by general practice.
3. The general principles of law recognized by civilized nations.

ARTICLE 19

The languages of the court shall be the official languages of the contracting Republics.

Upon the failure of the parties to determine the language or languages to be used, the court shall do so upon the request of one or other of the parties.

ARTICLE 20

Cases shall be brought before the court either by the notification of the special agreement or by a written application addressed to the secretary general. In either case the subject of the dispute and the contesting parties must be indicated.

The secretary general shall forthwith communicate the application to all concerned.

ARTICLE 21

The court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of each party.

Pending the final decision, notice of the measures suggested shall forthwith be given to the Parties and the Governing Board of the Pan American Union.

ARTICLE 22

The parties shall be represented by agents.

They shall have the assistance of counsel or advocates before the court.

ARTICLE 23

The procedure shall consist of two parts—written and oral.

ARTICLE 24

The written proceedings shall consist of the communication to the judges and to the parties of cases, counter-cases, and, if necessary, replies; also all papers and documents in support.

These communications shall be made through the secretary general in the order and within the time fixed by the court.

A certified copy of every document produced by one party shall be communicated to the other party.

ARTICLE 25

The oral proceedings shall consist of the hearing by the court of witnesses, experts, agents, and advocates.

ARTICLE 26

For the service of all notices upon persons other than the agents and advocates, the court shall apply direct to the government of the American Republic upon whose territory the notice has to be served.

The same provision shall apply wherever steps are to be taken to procure evidence.

ARTICLE 27

The hearing in court shall be public, unless the court shall decide otherwise or unless the parties demand that the public be not admitted.

ARTICLE 28

Minutes shall be made at each hearing and signed by the president and the secretary general.

ARTICLE 29

The court shall give direction for the conduct of the case, decide the form and time in which each party must present its arguments; and prescribe all measures regarding evidence.

ARTICLE 30

The court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

ARTICLE 31

The court may at any time entrust any individual, institution, bureau, commission, or other organization that it may select with the task of carrying out an inquiry or giving an expert opinion.

ARTICLE 32

During the hearing the judges may put any questions, considered by them to be necessary, to the witnesses, agents, experts, or advocates. The agents and advocates shall have the right to ask, through the president, any questions that the court considers useful.

ARTICLE 33

After the court has received the evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ARTICLE 34

Whenever one of the parties shall not appear before the court, or shall fail to defend its case, the other party may call upon the court to decide the claim in its favor.

The court shall, before doing so, prove not only that it has jurisdiction but also that the claim is supported by substantial evidence and well founded in fact and law.

ARTICLE 35

When the agents, advocates, and counsel have completed their case, the president shall declare the proceedings closed and the court shall render judgment.

The court shall withdraw to consider the judgment.

The deliberations of the court shall take place in private and remain secret.

ARTICLE 36

All questions shall be decided by a majority of votes of the members present at the hearing.

In the event of an equality of votes, the president shall have a casting vote.

ARTICLE 37

The judgment shall state the reasons on which it is based, and it shall contain the names of the judges who have taken part in the decision.

ARTICLE 38

In case the judgment of the court is that of the majority, members dissenting from the judgment shall be entitled to state their reasons, if they so desire.

ARTICLE 39

The judgment shall be signed by the president and by the secretary general. It shall be read in open court, notice having been given to the agents.

ARTICLE 40

The judgment shall be final, unless a demand for a revision be made within * * * months. In the event of doubt as to the meaning and scope of the judgment, the court shall construe it upon the request of any of the parties.

ARTICLE 41

An appeal may be made within a period of * * * from the decision of the court of first instance on the ground of non-application or error in the application or the interpretation of a principle of law.

The motion of appeal shall be made within a period of * * * and the appeal shall be heard by the court of appeal at a date to be fixed by its president, after consulting the parties.

The appellant shall file his case in writing with the secretary general of the court at a date to be fixed by the president, and the adverse party shall likewise reply in writing at a time to be fixed in the same manner.

At a period to be fixed by the president, after consultation with the parties, the case shall be set for early argument. The questions of law shall be argued according to the procedure established by the regulations of the court.

Each party shall have the right to make one oral reply to its adversary, at the conclusion of which the court shall declare the proceedings closed.

The judgment shall be read in open court, the agents of the parties having been notified to attend.

Members of the court dissenting from the judgment may state in writing the grounds of their dissent.

ARTICLE 42

The judgment of the court of appeal shall be final.

In the event of doubt as to the meaning or scope of the judgment, the court of appeal shall construe it at the request of any of the parties.

ARTICLE 43

The application for a revision of a judgment can be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was when judgment was given unknown to the court and also to the party claiming revision, provided that such ignorance was not due to the negligence of the latter.

The proceedings for revision shall be opened by a decision of the court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible.

The court may require compliance with the judgment before it admits proceedings in revision.

The application for revision must be made at latest within six months of the discovery of the new fact.

ARTICLE 44

If a Republic considers that it has a legal interest which may be affected by the judgment, it may present a request to the court to be permitted to intervene as a party in the case.

The court shall be competent to decide upon this request.

ARTICLE 45

Whenever the interpretation of a convention is involved to which Republics other than those concerned in the case are parties, the secretary general shall notify all such Republics forthwith.

Every Republic so notified has the right to intervene in the proceedings; but if it avails itself of this right, the interpretation contained in the judgment shall be equally binding upon it.

Project No. 29

MEASURES OF REPRESSION

The American Republics * * * resolved to avoid resort to arms for the settlement of disputes which may arise between them, have agreed upon the following convention :

MEASURES OF SELF-REDRESS SHORT OF WAR

ARTICLE 1

The measures which do not involve war are of two kinds: Pacific and coercitive.

ARTICLE 2

Those of a peaceful nature are :

1. Severance of diplomatic relations.
2. Pacific embargo.
3. Non-intercourse.

ARTICLE 3

Those of a coercitive nature are :

1. Retorsion.
2. Reprisals.
3. Hostile embargo.
4. Pacific blockade.

ARTICLE 4

SEVERANCE OF DIPLOMATIC RELATIONS

In matters of importance an American Republic is authorized to sever its diplomatic relations with another in order to obtain redress for grievances which it has been impossible for it to obtain by negotiation through diplomatic channels.

The withdrawal of diplomatic agents is a peaceful act, and a legal right, but one of such moment that it should only be resorted to after great deliberation.

ARTICLE 5

PACIFIC EMBARGO

Embargo is the detention within the national domain of ships or other property which might otherwise depart for a foreign territory.

To be pacific, the embargo should only restrain the departure from a territory of its own vessels or property.

ARTICLE 6

NON-INTERCOURSE

Non-intercourse is a suspension of commercial intercourse with the country whose acts are the source of complaint, in order to secure a government and its citizens from treatment contrary to international law.

ARTICLE 7

RETORSION

Retorsion is action taken by a country in order to compensate it for damages suffered through the action of another nation taking the law into its own hands.

Acts of retorsion may assume a variety of forms, an extreme example of which is the display of force made by the maintenance of a naval squadron in or near the waters of the nation charged with wrong-doing.

ARTICLE 8

REPRISALS

Reprisals consist in any act or measure undertaken for the purpose of obtaining, directly or indirectly, reparation for the illegal conduct of another nation.

ARTICLE 9

HOSTILE EMBARGO

Hostile embargo is an act by which ships or properties of a foreign nation are detained, in order to prevent them either from leaving the territory of the nation imposing the embargo or from reaching foreign territory, especially the country against which the embargo is directed.

ARTICLE 10

PACIFIC BLOCKADE

Pacific blockade consists in the obstructing or closing of the ports or coasts of one country by another. Its purpose is to prevent access to or egress from a foreign port or coast—compelling the territorial sovereign to yield to the demands which have been made upon the blockaded State. If confined solely to the country against which the measure is taken, the act is said to be pacific, and it does not necessarily create a state of war. If the blockade affects the vessels of other nations, it is in effect an act of war.

As the use of force against any American Republic is a matter of concern to all the Republics of the continent, any Republic against which an attempt is made to enforce any one of the above-mentioned measures should immediately notify the Pan American Union in order that the governing board thereof may consider the matter and take such action as it may deem advisable.

Project No. 30

CONQUEST

The American Republics * * * animated by the desire of preserving the peace and prosperity of the continent, for which it is indispensable that their mutual relations be based upon principles of justice and upon respect for law, solemnly declare as a fundamental concept of American international law that, without criticizing territorial acquisitions effected in the past, and without reference to existing controversies—

In the future territorial acquisitions obtained by means of war or under the menace of war or in presence of an armed force, to the detriment of any American Republic, shall not be lawful; and that

Consequently territorial acquisitions effected in the future by these means can not be invoked as conferring title; and that

Those obtained in the future by such means shall be considered null in fact and in law.

APPENDIX

COSTA RICAN PLAN FOR A PAN AMERICAN COURT OF JUSTICE, SUBMITTED TO THE FIFTH INTERNATIONAL CONFERENCE OF AMERICAN STATES, SANTIAGO, CHILE, 1923, AND REFERRED TO THE INTERNATIONAL COMMISSION OF JURISTS

The Governments of the Republics of * * * with a view to avoiding by peaceful means the conflicts which may result in wars, as also to contribute toward the maintenance of peace, friendship, and harmony, which ought to exist between the nations of a continent, have decided to conclude a treaty for the realization of such noble purposes, and have therefore appointed the following delegates * * * who, assembled in the Fifth International Conference of American States, held at Santiago, Chile, after having presented their respective credentials, which were found to be in due form and order, have agreed upon the following:

ARTICLE 1. The high contracting parties agree to constitute and maintain a permanent court of justice, to which they bind themselves to submit all the differences that may occur between them, in case their respective ministries of foreign affairs may not have been able to reach an agreement.

ARTICLE 2. The court will also hear international questions which any of the adhering governments and a non-adhering nation, by special convention, may have agreed to submit to it.

ARTICLE 3. The court will be formed by judges chosen by a majority of the members of the supreme court of each of the signatory States, one for each State, from among the jurists who may have the qualifications required for the office, and who are noted for their personal integrity, as well as for their knowledge of international law. The vacancies will be filled by substitute judges named at the same time and in the same way as the permanent judges, and must have the same qualifications as the former.

ARTICLE 4. The International Court of Justice of America will have its seat at * * * ; but it may temporarily transfer its headquarters when the necessities of justice so require.

ARTICLE 5. The permanent and substitute judges will be appointed for a period of ten years, counting from the day they assume their duties, and can not be reelected.

In the case of death, resignation, or inability of any of them, the Supreme Court of the respective State shall proceed to name a substitute and the new judge will continue in the period of his predecessor.

ARTICLE 6. The general expenses of the court will be shared equally by the signatory nations; and the expenses arising from each particular case will be paid as may be decided by the court. When a question be submitted to it in which one of the parties has not adhered to the treaty, it will be admitted after it has been agreed that the State against which sentence may be given, obliges itself to pay the amount of the award and costs, which the court may deem necessary.

The legislative authority of each of the high contracting parties will fix the salary of the respective judges at the beginning of the period referred to in the preceding article, and can not alter same until the following period.

The signatory governments will assign the necessary items in their yearly budgets, as well as the amount required for the expenses of the court, and they must remit in advance to the secretarial department of same, quarterly instalments for the salaries and expenses.

ARTICLE 7. The court is authorized to establish the procedure to be followed by the parties, as well as causes for challenging, excusing, or impeding the capacity of the judges. Likewise, it will appoint the members of its governing board and will establish its internal regulations, determining the formalities and time limits that may be necessary and which are not provided for in this treaty.

ARTICLE 8. The court session called to decide each particular case shall be composed of not less than three, nor more than seven judges, elected in a plenary session of the court, excluding the judges who are natives or citizens of the State or States having a direct or indirect interest in the controversy.

ARTICLE 9. The judges of the court may not hold any other political or administrative office. Nor may they act as agents, counselors, or lawyers in any international questions. During their period of office they will enjoy diplomatic privileges and immunities.

These dispositions shall not apply to substitute judges, except during active service.

ARTICLE 10. The court shall have a permanent status, and will always be ready to receive the claims, allegations, and replies, which any of the signatory or other interested nations may desire to submit thereto, as provided in Articles 2 and 6.

ARTICLE 11. The court shall be competent to consider all questions that may be presented by the parties, provided that the controversy be of any of the following categories:

- (a) The interpretation of a treaty.
- (b) Any point of international law.
- (c) The facts which brought about the violation of an international obligation.

In case of doubt as to whether or not the court is competent, it shall previously give its decision on that point.

ARTICLE 12. The court will apply:

1. International conventions and regulations expressly recognized by the litigating States;
2. International usage as proof of a practice accepted as a juridical precedent;
3. General principles of law recognized by civilized nations;
4. Previous decisions of the court and doctrines of the most qualified publicists as auxiliaries to fix the rules of law; and
5. In addition, it will be a jury which shall conscientiously issue its verdicts.

ARTICLE 13. The court may not be requested to eventually revise its decision except in virtue of the discovery of a fact which would have been able to decisively influence same, and which was unknown prior to that decision through no fault, error, or omission of the party alleging same.

Petition for revision may only be presented within six months after the notification of the decision and shall be examined by the court in plenary session excluding the judges appointed by the nation or nations interested in the litigation.

ARTICLE 14. The present treaty will come into force as soon as at least 12 of the signatory States shall have ratified it and will not lapse for any reason whatever during a period of 10 years from its last ratification, and thereafter it shall continue in force unless it has been denounced by at least half of the signatory Governments with a year's notice.

ARTICLE 15. This treaty shall be ratified as soon as possible in accordance with the constitutional provisions of the high contracting parties, and will become effective by an exchange of ratifications through the Pan American Union at Washington, in whose archives there will be deposited authentic copies in Spanish, English, Portuguese, and French.

The Republics of America not ratifying this covenant or which may not have been represented at the Fifth International Conference may adhere to the stipulations of the present treaty at any time by merely forwarding the official notification that their respective constitutional authorities have ratified it.

In witness whereof the aforementioned plenipotentiaries sign this treaty in the city of Santiago.

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